STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **THE DETROIT EDISON COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.	)	Case No. U-16472
In the matter of the application of **THE DETROIT EDISON COMPANY** for authority to defer certain pension and post-employment benefit expenses for future amortization and recovery.	)	Case No. U-16489

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 12, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before August 26, 2011, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before September 7, 2011. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Mark Cummins

Digitally signed by Mark Cummins
DN: cn=Mark Cummins, c=US, email=cumminsm1@michigan.gov
Date: 2011.08.12 14:42:56 -04'00'

Mark E. Cummins
Administrative Law Judge

August 12, 2011
Lansing, Michigan

S T A T E O F M I C H I G A N

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PROPOSAL FOR DECISION

Issued and Served: August 12, 2011

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PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

The Detroit Edison Company (Detroit Edison or the Company), a subsidiary of DTE Energy Company (DTE), is a public utility engaged in the generation and distribution of electricity and other related services to approximately 2,000,000 residential, commercial, and industrial customers throughout the state of Michigan. Detroit Edison serves its jurisdictional electric customers under rate schedules and charges established by the Commission's January 11 and January 25, 2010 orders in consolidated Cases Nos. U-15768 and U-15751, as well as pursuant to several special contracts previously approved by the Commission. In addition, the Commission has also authorized--through various orders--the recovery of certain additional costs as set forth in the tariffs on file with the Commission, including power supply cost recovery (PSCR) factors.

On October 26, 2010, Detroit Edison filed an application, with supporting testimony and exhibits, in Case No. U-16489. The purpose of that application was to seek authority to defer certain pension and post-employment benefit expenses for future amortization and recovery.

On October 29, 2010, the utility filed an application in Case No. U-16472--again with supporting testimony and exhibits--seeking authority to increase its jurisdictional rates by approximately $443 million annually.[1] According to the utility, its requested increase is based on projected April 2011 through March 2012 test year data, which it contends establishes a need for higher rates to cover: rising environmental compliance costs; increased expenses associated with the operation and maintenance (O&M) of the company's electric distribution system and generating plants; expanding costs related to employee pensions and other post-employment benefits (OPEB); increased capital expenditures arising from the addition of physical plant to Detroit Edison's system, particularly with regard to its Advanced Metering Infrastructure (AMI) program; rising costs associated with inflation; additional costs arising from safety and reliability

[1] As noted in the utility's initial brief, the rate increase requested in its application could be reduced by approximately $190 million, to roughly $253 million, through Commission approval of several suggested adjustments offered by Detroit Edison "to lower immediate impact on customers and other forms of regulatory relief." Detroit Edison's initial brief, p. 1. These proposed adjustments consisted of: (1) letting the utility recover a portion of its increased pension and other post-employment benefits expense in future periods, as opposed to including all of those costs in the present case; (2) retaining and modifying the Choice Incentive Mechanism to reduce the impact of required rate relief on customers during 2011; and (3) reducing the level of the Nuclear Decommissioning Surcharge to reflect the company's proposed extension of the operating license for its Fermi 2 nuclear plant. See, Application at pp. 4-5.

upgrades; increasing taxes and capital structure costs; the financial impact caused by the expiration of certain wholesale for resale contracts with various municipal and cooperative electric systems; and declining revenues due to both the generally poor economic climate in its service territory and an increase in the number of customers participating in Electric Choice.

In addition, Detroit Edison's application requests, among other things, that the Commission: (1) either eliminate the utility's Uncollectible Expense True-up Mechanism [UETM] if the UETM base is increased to approximately $73 million,[2] or otherwise retain the existing mechanism if some lower base level is established; (2) adopt the same PSCR base as approved in the company's two most recent rate cases; (3) provide ongoing authority to include all urea-related costs[3] as part of Detroit Edison's PSCR process; (4) modify its Revenue Decoupling Mechanism [RDM] to base the RDM's calculation on sales reductions arising from the utility's Energy Optimization [EO] activities; (5) continue use of Detroit Edison's Choice Incentive Mechanism [CIM] and, if the Commission approves the utility's request to delay recognition in rates of the recent increase in the use of electric choice, modify the CIM to eliminate both the current 200 megawatt-hour [MWh] deadband and the 90/10 sharing provision; (6) eliminate the Line Clearance Recovery Mechanism [LCRM] and the storm and non-storm Restoration Reconciliation Mechanism [RRM], so long as the Commission agrees to modify the

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[2] The base level of Detroit Edison's UETM (which represents the amount of uncollectible accounts expense built into rates) is currently $66,398,873, which is set forth on page 60 of the Commission's January 11, 2010 order in consolidated Cases Nos. U-15768 and U-15751 (the January 11 order).

[3] As noted by the Company, urea is a chemical agent used at Detroit Edison's Monroe Power Plant's selective catalytic reduction units in order "to reduce the NO_X emissions and thus reduce the need for NO_X allowances," whose cost would otherwise be recovered as part of the utility's PSCR process. Application, pp. 5-6.

RDM as requested and continue using, for ratemaking purposes, a 5-year average of restoration expenses; (7) find that the company's AMI program will have a positive impact on customers, and that Detroit Edison's AMI-based investments continue to be a reasonable and prudent use of utility resources; (8) approve use of a new, customer-focused non-executive incentive compensation plan; (9) revise rates to remove 35%--or about $25 million--of the asserted subsidy that full-service commercial and industrial customers currently provide to those customers taking service on the utility's residential rates; (10) eliminate several tariff schedules; (11) modify Detroit Edison's Municipal Street Lighting Rate Schedule to add language concerning charges to be assessed for the de- or re-energizing of streetlights; (12) add a tariff provision establishing an Experimental Programmable Photocell Service; (13) reflect, in the rates established as a result of this proceeding, any new level of depreciation expense arising from the Commission's order in Case No. U-16117; and (14) increase the utility's return on common equity from 11.00% to 11.125%.

Pursuant to due notice, a prehearing conference was held in Case No. U-16472 on November 23, 2010, before Administrative Law Judge Mark E. Cummins (ALJ). In addition to Detroit Edison and the Commission Staff (Staff), several potential intervenors also filed appearances and participated at the prehearing. Intervention was granted on that date to the following parties, grouped collectively as appropriate: The Department of Attorney General (Attorney General); the Association of Businesses Advocating Tariff Equity (ABATE); the Michigan Community Action Agency Association (MCAAA); the Utility Workers Union of America, AFL-CIO, Local 223 (Local 223); the Detroit Edison Alliance of Retirees (DEAR); the City of Detroit; The Kroger Company (Kroger); the

Michigan Cable Telecommunications Association (MCTA); the Michigan Environmental Council, National Resources Defense Council, and the Environmental Law and Policy Center (collectively, MEC); Energy Michigan, Inc.; and the Detroit Medical Center (DMC). Between December 28, 2010 and April 7, 2011, the ALJ also granted late petitions to intervene filed on behalf of Henry Ford Health System, William Beaumont Hospital, and Trinity Health-Michigan (collectively, with DMC, the Hospitals), as well as Wal-Mart Stores East, LP, and Sam's East, Inc. (collectively, Wal-Mart).

This is Detroit Edison's second general rate case since Act 286 of 2008, MCL 460.6a, et seq., (Act 286) took effect on October 6, 2008.[4] As noted by the Commission on page 3 of its May 26, 2009 order in Case Nos. U-15768 and U-15751, "Act 286 established extremely short timeframes for concluding rate cases" such as this. For example, Section 6a(1) of Act 286 provides that if the Commission has not issued an order within 180 days of the filing of a complete application for a rate change, the utility may self-implement any portion of its proposed change through "equal percentage increases or decreases applied to all base rates" (although, if the utility's proposal is based upon a projected test year, self-implementation shall not occur prior to the start of the projected 12-month period). MCL 460.6a(1). Moreover, Section 6a(3) requires the Commission to issue its final order within 12 months following receipt of a complete rate case filing, lest the application be considered approved. See, MCL 460.6a(3). Much to their credit, the parties to Case No. U-16472 that were present at the prehearing

[4] The January 11, 2010 order provided Detroit Edison with approximately $217 million in general rate relief. See, January 11 order, p. 85. The tariffs implementing that rate increase were formally approved and given effect on January 25 and 26, 2010, respectively. See, the Commission's January 25, 2010 order in Cases. Nos. U-15768 and U-15751, p. 2.

conference developed a consensus schedule that would allow the Commission to meet the various deadlines imposed by Act 286.

The prehearing conference in Case No. U-16489 was conducted by the ALJ on December 28, 2010. In addition to participation by Detroit Edison and the Staff, ABATE was granted intervenor status and a schedule was established (which closely paralleled that adopted in Case No. U-16472). Subsequently, on January 5, 2011, the ALJ granted ABATE's motion to consolidate Cases Nos. U-16472 and U-16489.

Pursuant to the previously-established schedule for the utility's general rate case, an evidentiary hearing was held on April 6, 2011, regarding potential self-implementation of the Company's requested rate increase. In the course of that hearing, the testimony of Daniel G. Brudzynski, DTE Energy's Vice President of Regulatory Affairs, was bound into the record and each of his three accompanying exhibits was received into evidence. In his testimony and exhibits, Mr. Brudzynski recommended self-implementation of a rate increase in the amount of $230 million annually, and supported using an alternative rate design instead of the statutory equal-percentage default rate design. See, 5 Tr. 72-82; Exhibits A-23, and A-24. Although none of the other parties offered evidence of their own regarding self-implementation, both Staff and ABATE filed--in advance of the April 6, 2011 hearing--responses to Detroit Edison's proposal, and the Hospitals filed a concurrence with those responses. On April 26, 2011, the Commission issued an order limiting the Company's self-implemented rate increase to $107 million, but adopting the utility's proposed rate design.

Evidentiary hearings concerning the remainder of these consolidated cases took place on May 3 through May 6, as well as May 9 and 10, 2011. Detroit Edison offered testimony and exhibits from a total of 21 witnesses (including Mr. Brudzynski), while the Staff offered testimony and exhibits from 15 witnesses. Also, both the Attorney General and MEC sponsored three witnesses each, and Local 223, MCAAA, and ABATE sponsored two each. Finally, DEAR, Energy Michigan, the Hospitals, Kroger, and Wal-Mart each offered testimony from one witness. When combined with the evidence received during the April 6, 2011 hearing, the entire record consists of 2,375 pages of transcript and 366 exhibits.

Consistent with the agreed upon schedule for these consolidated cases, initial briefs were filed on or about June 3, 2011, by all of the parties except MCTA, and reply briefs were filed on June 22, 2011, by all of the parties except MCTA, Kroger, Local 223, and DEAR.[5] It should be noted that, in its briefs, Detroit Edison accepted two proposed changes sought by the Staff. Based upon those changes (one of which involved a "more recent update to the Company's pension and [OPEB] costs," while the other concerned "recognition of contract renewal associated with one of [its] wholesale for resale customers"), the utility now claims "a jurisdictional revenue deficiency of $357 million," or approximately $361 million on a total electric company basis. Detroit Edison's initial brief, pp. 12-13, and reply brief, pp. 2-3. For its part, the Staff noted in its briefs that, based on an updated capital expenditure figure, it was increasing its recommended revenue deficiency figure from $159,092,000 to $161,677,000, on a total company basis. Staff's initial brief, p. 5, and reply brief, p. 9.

[5] On July 25, 2001 ABATE also filed a brief entitled "Supplemental Authority" in which it addressed the potential effect of a recent Court of Appeals' decision regarding an issue that, in retrospect, was germane to this case.

As in most cases of this nature, a large amount of testimony and argument has been presented with regard to issues that are both numerous and complex. In addition to the typical issues arising in general rate cases like this, a significant portion of the record dealt with (1) cost of service and rate realignment, (2) tracking or decoupling mechanisms, such as the UETM, CIM, and RDM, (3) the proposed level of spending on AMI, and (4) various rate design issues raised by the utility's customers. Despite the number and complexity of these various concerns, Act 286 requires (as noted earlier) the issuance of a Commission decision within 12 months after the application's filing. Thus, in the interest of issuing this Proposal for Decision (PFD) in a timely manner, not all of the material presented in this case will be expressly discussed. The various parties' summaries of the evidence and arguments in support of their respective positions are fully set forth in their pleadings, briefs, and reply briefs, and the underlying basis for the same can be found in the evidentiary record. Thus, although the ALJ has considered the entire record in arriving at the findings and conclusions expressed below, only those arguments, testimony, and exhibits that are necessary for a reasoned analysis of the disputed issues will be specifically addressed in the PFD.

II.

TEST YEAR

In every general rate case, the initial task is the selection of an appropriate test year. Essentially, this task is comprised of two components.

First, a decision must be made regarding the 12-month period to use in setting the utility's new rates. In this proceeding, both Detroit Edison and the Staff proposed using the 12-month period from April 1, 2011 through March 31, 2012, for that purpose. The Attorney General expressly supported use of that period, and none of the other parties objected. Based on this lack of disagreement, the ALJ recommends adopting that 12-month period for use in this case.

Second, a determination must be made regarding how to best establish values for the various levels of revenue, expenses, rate base, and capital structure used in the rate-setting formula. Generally, these values may consist of historical, future, or a combination of historical and future data. A historical test year uses actual operating data that, once audited, is generally adjusted for known and measurable changes. A future test year (frequently referred to as a projected test year) uses projections to determine the levels of revenue, expenses, rate base, and capital structure for a future period of time.

Although parties often clash over what type of test year is most appropriate in a given case, the Commission has consistently expressed a preference for using historical, as opposed to purely projected, data. See, i.e., the Commission's November 7, 2002 order in Case No. U-13000, at p. 13. Nevertheless, Section 6a(1) of Act 286 states that a utility may "use projected costs and revenues for a future consecutive 12-month period" to develop its requested gas or electric rates and charges. MCL 460a(1). This statutory provision has altered the debate somewhat by specifically indicating that Michigan's regulated gas and electric utilities have the right to base their general rate case filings exclusively upon projections of anticipated activities and their related expenses, should they so desire. Nevertheless, what it does not do, however, is demand that either the parties or the Commission blindly accept any and all numbers springing from a utility's projections of future actions and the potential costs arising from those actions.

The Commission recently acknowledged this fact in its January 11 order, where it stated that:

> In a case where a utility decides to base its filing on a fully projected test year, the utility bears the burden to substantiate its projections. Given the time constraints under Act 286, all evidence (or sources of evidence) in support of the company's projections should be included in the company's initial filing. If the Staff or intervenors find insufficient support for some of the utility's projections, they may endeavor to validate the company's projections through discovery and audit requests. If the utility cannot or will not provide sufficient support for a particular revenue or expense item (particularly for an item that substantially deviates from the historical data) the Staff, intervenors, or the Commission may choose an alternative method for determining the projection.

January 11 order, p. 9.

Apparently both anticipating (in its pre-filed testimony) and recognizing (as expressed in its post-hearing briefs) the Commission's consistently-expressed views concerning what currently constitutes the preferred approach, Detroit Edison contends that it refrained from sponsoring a fully-projected test year. Instead, the Company explains, it "normalized and adjusted actual results from the historical test year ended December 31, 2009" to arrive at its initially-projected $443 million ($444 million on a total electric basis) revenue deficiency. Detroit Edison's initial brief, p. 19. As noted earlier, that figure was subsequently reduced to a jurisdictional revenue deficiency of approximately $357 million (and roughly $361 million on a total company basis). Again, none of the parties object to using that test year as a basis for discussions. As a result, the test year information provided by the utility will be used as the starting point for the discussions concerning the various issues raised in this case.

III.

RATE BASE

The rate base for an electric utility like Detroit Edison consists of the capital invested in all used and useful plant and property (including leased nuclear fuel), less accumulated depreciation,[6] plus the utility's working capital requirements.

In this case, Detroit Edison initially proposed setting its total company rate base for the test year at $10,146,101,000, consisting of $9,553,657,000 in net plant and $592,444,000 of working capital. Exhibit A-9, Schedule B1, column (c). According to the utility, this corresponds to a jurisdictional test year rate base of $10,126,159,000, consisting of $9,538,959,000 in net plant and $587,200,000 of working capital. Exhibit

[6] In the course of a general rate case like this, the *precise* levels of both accumulated depreciation and depreciation expense often arise as areas of dispute. In this proceeding, for example, the Staff's presentation recommended adjustments to accumulated depreciation that could effect the specific rate base number ultimately adopted by the Commission. See, e.g., Staff's initial brief, p. 8 (citing 11 Tr 2161-2162). Nevertheless, while the ALJ in the present case will still deal with depreciation-related issues in general terms, recent events have precluded him from establishing, with 100% accuracy precise levels for depreciation-related figures. This is because, due to Commission directive, Detroit Edison filed an application in Case No. U-16117 on November 2, 2009 seeking approval of revised depreciation rates. In anticipation of a final order in that proceeding, the Staff noted that "the depreciation rate reductions [it] proposed in this rate case are preliminary and that they will need to be recalculated using the approved plant levels and composite rates in the Commission orders for the rate case and the depreciation case." Staff's initial brief, p. 16. Shortly after submission of the initial briefs in this proceeding, and within a week of the deadline for filing reply briefs, the Commission issued a decision in Case No. U-16117, in which it stated that "[t]he new depreciation rates and practices approved by this order shall take effect on the day after issuance of the final order in Case No. U-16472." June 16, 2011 order in Case No. U-16117, p. 16. Thus, as noted by Detroit Edison, the ALJ need not spend a great deal of time and effort trying to ascertain the precise levels of accumulated depreciation and depreciation expense and, instead, "need only recommend that the new depreciation rates for [the Company] set forth in U-16117 be implemented prospectively" beginning the day after the Commission issues its final order in this case. Detroit Edison's reply brief, p. 4. This may occasionally cause some level of disconnect between the positions placed on the record and the particular dollar values adopted by the ALJ. For example, and as mentioned above, one of the Staff's proposed adjustments reflected on Exhibit S-2, Schedule B3, is a $16.4 million reduction in Detroit Edison's accumulated provision for depreciation. In computing that adjustment, the Staff noted that because the utilty "used the current depreciation rates approved in Case No. U-11724" (which the ALJ recognizes are now stale), it "elected to incorporate into this rate case the composite depreciation rates proposed by the Staff in the pending depreciation rate case U-16117," (which, based on a reading of the Commission's June 16, 2011 order in that case, were adopted in large degree, albeit not in their entirety). Thus, while the ALJ hereby adopts for use in this PFD the Staff's proposed depreciation rates and the dollar values resulting from them, those values will need subsequent adjustment.

A-9, Schedule B1, column (d). However, the Company subsequently adopted an adjustment suggested by the Staff (based on renewal of the utility's wholesale for resale contract with the Detroit Public Lighting Department [DPLD], as described on 11 Tr 2348 and reflected on Exhibit S-11), which reduced its proposed jurisdictional rate base by a total of $50,660,000, with $50,544,000 of that reduction coming from net plant and the remaining $116,000 coming from working capital. Detroit Edison's initial brief, Attachment A, p. 2, at lines 40 and 44. As a result, the utility currently proposes adoption of $10,075,499,000 as its jurisdictional rate base. Id., at line 44.

The Staff, on the other hand, originally proposed setting Detroit Edison's total company rate base figure at $10,059,177,000 ($9,988,965,000 on a jurisdictional basis) consisting of $9,544,367,000 in net plant and $514,810,000 of working capital. Exhibit S-2, Schedule B-1.1. However, based on an adjustment reflecting more recent data provided by one of its own witnesses, Charles J. Reasoner, the Staff added $5,858,000 to its projection of total company rate base, thereby increasing that figure to $10,065,035,000. Staff's reply brief, p. 9. Interestingly, while agreeing with the Staff regarding the need to make "two technical corrections" in light of Mr. Reasoner's testimony, Detroit Edison offered testimony and exhibits indicating that the Staff's overall upward adjustment was slightly too small. Detroit Edison's initial brief, p. 19. Specifically, the utility provided testimony and exhibits indicating that the Staff should have actually added $8,833,000 to its total company rate base figure (as opposed to only $5,858,000). See, 7 Tr 1148-1149; Exhibit A-29, Schedules 4, 5, and 7.

Although stating that it "disagrees with the Company's adjustments" in this regard, the Staff cites to no testimony or exhibits that contradict the adjustment level proposed by the utility. Staff reply brief, p. 9. As such, the ALJ has no recourse but to conclude that the adjustment level advocated by Detroit Edison should be used for purposes of discussion in this proceeding, and that the total company rate base figure assigned to the Staff's case should be $10,067,825,000 (based on the Staff's initial total company rate base figure of $10,059,177,000, plus the $8,833,000 rate base adjustment advocated by the utility, less its corresponding $185,000 change in accumulated depreciation). See, Exhibit A-29, Schedule 7. This adjusted figure would appear to comport with a jurisdictional rate base level for the utility of approximately $9,997,602,000.[7]

Beyond that technical adjustment, the difference between the utility and the Staff positions regarding overall rate base arises from the Staff's recommendation to reduce net utility plant by approximately $9.3 million and working capital by about $77.6 million. The proposed net reduction to net utility plant is based on four propositions. The first is the Staff's assertion that Detroit Edison's proposed level of test year capital expenditures concerning system reliability (which the utility projected to be $97,888,000) is excessive and should be reduced to $79,711,000. See, Staff's initial brief, p. 11. The second arises from the Staff's proposal to reclassify certain capital expenditures related to the utility's AMI and Smart Grid/Smart Home projects from plant in service to construction work in progress (CWIP). See, Id., at p. 8. The third is based on its recommendation to transfer $3,217,000 of assets from plant held for future use to non-utility property (account 121), and to remove another $257,000 from plant held for future use to reflect the transfer of two parcels to plant in service during 2010, but for which

[7] This jurisdictional figure is arrived at by applying the same 99.3025% conversion factor reflected in the Staff's "as filed" case. In this instance, the calculation would be $10,067,825,000 x 0.993025, with the result being $9,997,602,000.

the utility neglected to reduce plant held for future use. See, Id. at pp. 14-15. The fourth corresponds to the Staff's presumed adoption of its overall position in Case No. U-16117, which would reduce the utility's accumulated provision for depreciation by approximately $16.4 million. See, Staff's initial brief, pp. 15-16. As for the Staff's suggested $77.6 million reduction to Detroit Edison's projected working capital balance, that proposal is based on disallowing (1) the utility's "$67.7 million investment with Mellon Bank corresponding to DTE's liability for certain non-qualified benefit plans," (2) "11.6 million in deferred gains from the MGM land sale in 2005," and "$1.7 million in deferred compensation consistent with the disallowance [requested with regard to] O&M expense." Staff's initial brief, p. 16.

In addition to the host of proposed adjustments outlined above, all of which would affect the level of rate base adopted for use in the test year, the Staff addressed one other issue related to Detroit Edison's projected capital expenditures. Specifically, Staff witness Ronald J. Ancona, expressed concern regarding the utility's proposal to continue making capital improvements in what he viewed as the Company's "marginal" generating units.[8] Specifically, he testified that:

> New capital expenditures at these plants risk less than full depreciation and a positive plant balance at the time they may be taken out of service. If this were to happen, customers may not have received the full benefit of the expenditures compared to what they paid through rates. Staff strongly recommends that the Commission put Detroit Edison on notice that should a "marginal" plant be taken out of service with a positive plant balance, Detroit Edison will have to provide full support for decisions leading to the expenditures, and the removal of the plant would be pro-rated pursuant to a schedule similar to those included in purchase power agreements (PPAs) with qualifying facilities (QFs). In those PPAs, there were

[8] According to Mr. Ancona, the Staff considers marginal generating units to be the plants in Detroit Edison's fleet that are the "most likely [to be] taken out of service due to age, fuel, operational history, pollution control equipment, etc." 2 Tr 2296. "More simply stated," he continued, these would be any plants "other than Monroe, Belle River, Ludington, and Fermi 2." Id.

> provisions for penalties or escrow balances to protect against the QF not fulfilling the contractual obligation, primarily as to operating the full term of the PPA.

11 Tr 2297. Based on Mr. Ancona's testimony, and notwithstanding the fact that the utility seems "sensitive to the Staff's concerns" (and is thus projecting reduced capital expenditures on its "marginal" plants in 2011 and 2012), the Staff proposes reducing the recovery of any positive plant balance by 10% for each year any "marginal" plant is not in service between 2012 and 2022. Staff's initial brief, p. 10.

MEC takes issue with this last point, disagreeing with the Staff's position regarding the potential 10% per year cost recovery. According to MEC witness George E. Sansoucy, if Detroit Edison knows that it could lose 10% of its potential recovery of a positive plant balance for each year that a "marginal" plant is closed prior to 2022, "the Company will be encouraged to keep such plant running through 2022, even if it burdens ratepayers with excessive costs in order to do so." 11 Tr 2008-2009. He claims that the better approach would be to disallow recovery of any capital investment relating to the Company's "marginal" plants, at least beyond "caretaker-related capital expenditures." 11 Tr 2009. As such, MEC contends that the Commission should reject Detroit Edison's entire $103 million projected increase in rate base for electric generating plant investment and "set the rate base on the assumption that [each of the Company's] marginal units"--which comprise a vast majority of the utility's coal-fired plants--are all "put into cold standby." MEC's initial brief, p. 2.

The Attorney General requests an even larger disallowance with regard to Detroit Edison's proposed capital expenditures than does MEC. According to his first witness, Sebastian Coppola, the Commission should adopt a "more reasonable" level of capital expenditures regarding such areas as:

> [D]istribution operations, fossil generation, environmental projects, hydraulic generation, steam generation, plant capacity utilization, nuclear generation, security systems, nuclear fuel costs, projected expenses to obtain an operating license for a new nuclear power plant, customer service and marketing, [and the] corporate staff group.

Attorney General's initial brief, p. 26 (citing 10 Tr 1800-1817). As reflected on Exhibit AG-25, at line 2, adopting all of Mr. Coppola's proposed changes would reduce the utility's rate base capital expenditures by $479,700,000. Moreover, his second witness, Michael J. McGarry, Sr., stated that due to "a substantial intergenerational inequity problem" created by Detroit Edison's plan for recovering capital costs relating to its AMI and Smart Grid/Smart Home projects, all capital costs arising from implementation of those programs should be deferred as regulatory assets "until the programs have been fully implemented" and, at which point, the Commission can obtain "more certain and better information regarding the cost-saving benefits being projected through 2030 and the likelihood that benefits will exceed the costs." 9 Tr 1534-1535. Doing so would, as reflected on Exhibit AG-25, at line 3, reduce Detroit Edison's total proposed capital expenditures by another $89,726,000. Taken together, the Attorney General's two requests would serve to reduce the utility's proposed rate base figure by $569,426,000. See, Attorney General's initial brief, p. 28.

As for ABATE, it expresses support for the Staff's proposals to (1) reduce the utility's reliability-related capital expenditures from the Company's suggested level of $97.888 million to the historical level of $79.711 million, for the reasons stated in Staff witness Reasoner's testimony, and (2) transfer $3.217 million from plant in service to non-utility property. See, ABATE's initial brief, p. 7 and reply brief, p. 2. It also asserts that Detroit Edison's AMI-related programs appear to have "a negative economic benefit," thus necessitating that the Commission "not go forward" with the program's immediate deployment and, instead, simply "require all intervening parties to develop a pilot program that will quantify any benefits that come from demand response." ABATE's initial brief, pp. 23-24. Finally, ABATE contends that, based on a potentially significant level of cost savings, the Commission should require Detroit Edison to file, "in its next rate case," a "lead-lag study" to use in determining the appropriate level of cash working capital.[9] Id., pp. 3-5.

Each of the above-mentioned issues is addressed in the following discussion of net utility plant and working capital.

A. Net Utility Plant

As noted above, the parties have raised several issues regarding the level of net utility plant that should be adopted for use in this rate case proceeding. These relate to Detroit Edison's proposed capital expenditures concerning its (1) "marginal" generating plants, (2) system reliability, and (3) AMI and Smart Grid/Smart Home projects. In addition, questions have been raised with regard to the appropriate treatment of plant held for future use, as well as the correct level of accumulated depreciation and amortization to be applied by the Commission in setting the test year rate base.

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[9] Although ABATE's witness also asserted that $877.1 million related to the utility's nuclear decommissioning trust fund should be excluded from working capital, Detroit Edison offered testimony showing that "the nuclear decommissioning trust fund assets are offset by the Fermi 2 decommissioning liability, which is also included in working capital," and, therefore, "the trust fund balance should not be removed from working capital." 7 Tr 1138. Seemingly conceding that the utility was correct in this regard, the issue was not addressed in either ABATE's brief or reply brief, and is thus considered abandoned by the ALJ.

1. Capital Expenditures on “Marginal” Generating Plants

As noted above, MEC expresses significant concern regarding the utility’s plan to continue using, let alone making additional capital improvements to, what have been referred to as “marginal” generating plants. According to MEC, (1) continued operation of these units is not necessary because electric demand is declining in Detroit Edison’s service territory, (2) putting these plants into cold standby would--due in large part to their inefficient heat rates--reduce the costs that Detroit Edison’s ratepayers would otherwise incur, both in the form of capital costs and O&M and fuel expenses, (3) the potential “non-requirement sales to the wholesale market” from these plants does not justify their continued operation, and (4) the utility has not identified the specific system reliability concerns that would justify keeping these units operating. See, MEC’s initial brief, pp. 4-14. Similarly, it takes issue with the Staff’s proposal to merely put the utility on notice that, should it take a “marginal” plant out of service with a positive plant balance, it will be required to provide significant support for that decision or be subject to reduced recovery of any positive plant balance related to that unit. As noted above, MEC’s concern in this regard is that the Staff’s proposal “could incentivize [Detroit Edison] to keep marginal units running at ratepayer expense longer than is cost-effective.” MEC’s reply brief, p. 6.

In response, Detroit Edison asserts that MEC’s “simplistic suggestion” to merely shut these plants down “lacks merit and reflects a fundamental misunderstanding of the functioning of the [Midwest Independent Transmission System Operator (MISO)] market,” in that the utility “cannot unilaterally put its plants into cold standby.” Detroit Edison’s reply brief, p. 25. According to the Company, the MISO tariff under which it functions requires any member utility that plans to decommission, place into extended reserve shutdown, or disconnect a generating resource--such as the coal-fired plants currently at issue--to first (1) notify MISO of its intent to do so, (2) allow MISO to perform various analyses to determine whether that resource is required for system reliability, and (3) await word from MISO regarding what mitigating actions might be required if the generating resource is removed from service. See, Id., pp. 25-27. Moreover, Detroit Edison contends that MEC's criticism of these plants on the grounds that they are "inefficient from a heat rate standpoint . . . is unsound" because it ignores the manner in which they are utilized in the MISO market. Id., p. 25. For example, the utility notes that although the Greenwood plant's operating heat rate is higher than its design heat rate, and while the design heat rate is typical of steady state operation at full load, this plant does not operate in that manner. Rather, it is called upon by MISO to be operated "as a cycling unit which has frequent startups and shutdowns, and extended operation at reduced loads." Id. The same is true of the Harbor Beach plant which, the Company also notes, "was built in the Michigan Thumb area to provide load security" in that part of Detroit Edison's service territory. Id., p. 26. As for the St. Clair 1-4 and Trenton 7 and 8 Units, the utility continues, these facilities burn relatively low cost fuel, thus increasing their frequency of economic dispatch by MISO. See, Id, p. 27. The Company therefore contends that no reasonable basis exists for concluding that it should refrain from making further capital investments in these "marginal" plants and, instead, simply shut them all down.

For its part, the Staff takes a more moderate view. While it generally adopts the utility's projections regarding capital expenditures for the facilities in question, it goes on to recommend that "the Commission put Detroit Edison on notice that should a 'marginal' plant be taken out of service with a positive plant balance," the Company would be required to "provide full support for the decisions leading to the expenditures and the removal of the plant from service." Staff's initial brief, p. 9. Moreover, the Staff asserts that "should the support provided by the Company prove insufficient, recovery [of those capital expenses] would be pro-rated, pursuant to a schedule similar to those" included in the PPAs for its various QFs. Id.

The ALJ agrees with Detroit Edison and the Staff, and finds that the MEC's request to disallow all proposed capital expenditures related to the utility's "marginal" plants should be rejected. As noted by the Company, "the possibility of saving anything [by shutting down these plants] is premised on the unsupported assumption that MISO would approve the removal of these generating units from active service without expensive and time consuming mitigating actions." Detroit Edison's reply brief, p. 27. Thus, the MEC implicitly assumes--without any record support--that the transmission upgrades MISO would likely require as a condition of allowing Detroit Edison to remove one or more of these "marginal" plants from service would be easy, uncontested, and without cost to the utility's ratepayers. In so doing, MEC fails to recognize that, because the utility relies on the International Transmission Company [ITC] to transmit electricity to the Company's distribution system, and because the potentially substantial costs borne by the ITC for upgrading its system to allow for the removal of these "marginal" units from the region's electric grid would be passed along to Detroit Edison's ratepayers, there is the distinct possibility that those transmission upgrades would be rejected by the Commission (as occurred in Case No. U-14933). Finally, the MEC apparently fails to note that any revenue received from the utility's non-requirement sales from these plants into the MISO market would ultimately be credited to the Company's PSCR customers, thus providing them with a direct benefit from those sales. See, 6 Tr 591-592; 7 Tr 625-627 and 649-651.

Nevertheless, while agreeing that the projected capital expenditures for these "marginal" plants should be included in the calculation of Detroit Edison's test year rate base, the ALJ also concurs with the Staff that some process should be adopted to help ensure that ratepayers are not unnecessarily required to pay for upgrades to generating units that the Company may ultimately shut down prior to the end of their useful lives. Thus, notwithstanding the countervailing claims by the utility (to the effect that the Staff's plan to potentially reduce recovery of the proposed capital expenditures if the plants in question are closed early is unreasonable) and the MEC (to the effect that the Staff's proposal would incentivize the Company to make more use of these units than truly necessary), the ALJ finds that the Commission should adopt the Staff's proposal to put Detroit Edison on notice that it may not fully recover new capital expenditures made on the "marginal" plants in question.[10] As noted by the Staff, doing so would "allow the Company to retire a plant based on [then] current conditions and economics, while at the same time protecting ratepayers." Staff's initial brief, p. 11.

2. Capital Expenditures Related to System Reliability Concerns

Detroit Edison included, as part of its 2010 projected test year rate base, approximately $97.8 million of capital expenditures related to system reliability.

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[10] Doing so would, the ALJ notes, correspond with the MEC's request to advise the utility that the Commission is going to "carefully scrutinize future rate increase requests" seeking further capital investment in its various coal-fired generating plants. MEC's initial brief, p. 14.

According to its witness on this issue, Paul C. Whitman, the utility's capital reliability spending primarily funds pole top maintenance (PTM) and repetitive customer outage projects. See, 6 Tr 380. In this regard, the utility notes that its PTM project "identifies and proactively replaces defective or damaged poles and pole hardware," while its repetitive outage program "is designed to improve reliability for pockets of customers experiencing five or more outages in a 12-month period." Detroit Edison's initial brief, pp. 60-61. Failing to fund these activities at the level proposed by the Company would, it contends, "result in more and longer outages for customers," and possibly lead to a higher level of overall spending (because post-outage work would "require additional expediting costs, such as overtime for the responding crews"). Id., p. 61.

ABATE and the Staff both contend that the spending level projected by the utility is excessive, and that any test year capital expenditures related to reliability projects should be limited to $79,711,000 in this case. ABATE's initial brief, p. 7; Staff's initial brief, p. 11. This contention is based on the fact that Detroit Edison's performance with regard to system reliability has, even at lower spending levels than requested in the present case, improved dramatically over the last several years and exceeds most utilities of a similar size. Moreover, they note that the spending level sought by the Company in this proceeding is well in excess of its three-year average expenditure level. See, Staff's initial brief, p. 13.

The ALJ agrees with ABATE and the Staff, and finds that their recommended level of reliability-related capital expenditures (namely, $79,711,000) should be adopted for the April 1, 2011 through March 31, 2012 test year. The adoption of this figure, which constitutes a $18,177,000 reduction from the level proposed by Detroit Edison, is based on the following three factors.

First, as noted by Mr. Reasoner, each of the three reliability indices that were applied to the utility's outage performance for the 2005 to 2009 period show significant improvement over that timeframe. See, 11 Tr 2184. Second, the reliability level achieved by the Company over much of that period (specifically, from 2006 through 2008) was--depending on the particular index applied--in either the first or second quartile, meaning that a majority of like-sized electric utilities throughout the United States had less reliable service than what Detroit Edison has recently achieved. See, 11 Tr 2186. Third, those results were achieved with an average capital investment of approximately $71.6 million per year from 2007 through 2010. See, 11 Tr 2189-2190. Thus, based on the utility's past spending levels and the results achieved over the last several years, the ALJ agrees with ABATE and the Staff that only $79,711,000 (which is the amount of Detroit Edison's reliability-related capital expenditure for 2010) should be included in the calculation of its net utility plant.

3. AMI, Smart Grid, and Smart Home Program Costs

The next area of dispute concerning the appropriate level of net utility plant to be adopted in this case involves the approximately $76 million of net projected capital expenditures Detroit Edison plans to make concerning its combined AMI, Smart Grid, and Smart Home program. 7 Tr 683-684. According to the utility's witness on this issue, Robert E. Sitkauskas, a cost/benefit analysis performed regarding these activities "shows that the program has a net present value (NPV) of $82.9 million, which indicates that the savings exceed the costs over the life of the program." 7 Tr 686. As such, the

Company requests that those costs be included in the computation of its overall test year rate base.

The Staff agrees, in large part, with Detroit Edison's proposal. Specifically, it recommends that the Commission approve the utility's full deployment of AMI, albeit "subject to a cap on the cumulative level of recoverable expenditures that can be included in rate base" (i.e., the Staff suggests that the project's recoverable costs should be limited to the "lifecycle revenue requirements" as calculated on a NPV basis). Staff's initial brief, p. 101; 11 Tr 2209. The Staff also recommends that the Commission include in rate base (as plant-in-service) $71,564,000 of the Company's AMI-related capital expenditures that have either been incurred to date or are projected to be incurred by the March 31, 2012 close of the test year. See, 11 Tr 2207. This figure differs somewhat due to the Staff's proposed exclusion of approximately $3.4 million of what the utility deemed "contingency costs" and which the Staff viewed as uncertain to actually be incurred. Id., at 2008. In addition, the Staff suggests that the Commission include approximately $8.1 million of the Company's total projected Smart Circuits and Smart Home pilot program expenses in rate base, but "[as CWIP] with an Allowance for Funds Used during Construction (AFUDC) offset." Staff's initial brief, pp. 101-102. As explained by the Staff's primary witness on this issue, Robert G. Ozar, the basis for this suggested treatment is that the "significant timing differences" between when the costs are incurred and the benefits are ultimately received from pilot programs like these "creates intergenerational inequities." 11 Tr. 2219. Finally, the Staff recommends that, in addition to five recommendations offered by Mr. Ozar regarding how to best deploy its AMI program, Detroit Edison be directed to file, "by March 31, 2012, and each year thereafter up to and including the calendar year of final deployment": (1) an updated lifecycle cost/benefit analysis of its AMI project; (2) a report that tracks each of the seven core AMI O&M savings on an annual basis, along with a comparison of actual versus projected savings for the same period; and (3) an updated demand response program status report. See, Staff's initial brief, p. 103.

In contrast, ABATE contends that the AMI program proposed by the utility should be discontinued immediately because, as shown by an NPV assessment performed by the Staff, it is uneconomic. ABATE's initial brief, p. 22, and its reply brief, p. 8. Specifically, ABATE asserts that the Staff's analysis concluded that "the AMI program has a negative economic benefit of $52.3 million, which contrasts sharply with [Detroit] Edison's net present value of a positive $34.7 million." Id. (citing 9 Tr 1487). ABATE therefore recommends that the Commission suspend the AMI program and "require all interested intervening parties to develop a pilot program that will quantify any benefits that come from demand response," which ABATE's witness on this matter, James T. Selecky, found to be essential in determining whether the benefits from any AMI program will exceed its costs. See, 9 Tr 1487-1488.

The Attorney General recommends that the Commission reject the Staff's proposal to include $71,564,000 of AMI costs in rate base. Instead, he advocates simply including that figure on the Company's books as a regulatory asset until the AMI project is at or near full deployment. At that point, the Attorney General continues, a prudency review should be performed and, based on its results, the Commission could more accurately assess whether or not to include Detroit Edison's AMI-related capital expenditures in rates. This would, the Attorney General notes, have the additional benefit of reducing much of what he viewed as a large intergenerational inequity, under which current ratepayers would be required to pay noticeably higher rates to establish a program whose benefits will mainly accrue to customers taking service in the future.

The ALJ finds the overall proposal offered by the Staff concerning the treatment of AMI, Smart Grid, and Smart Home capital expenditures preferable to those offered by the other parties to this proceeding, and concludes that it should be adopted (at least with regard to the spending levels anticipated for the test year ending March 31, 2012). In reaching this conclusion, however, it should be noted that the respective NPV analyses offered by Detroit Edison and the Staff do--as pointed out by ABATE's witness, Mr. Selecky--provide more than ample reason for caution with regard to ongoing investment in these projects. As the Staff, noted numerous issues exist regarding the NPV levels computed in this case. See, Staff's initial brief, pp. 104-107. In light of those and other concerns, including the significant likelihood of at least some degree of intergenerational inequity (as described by both Mr. McGarry and Mr. Ozar), the ALJ recommends that the Commission implement the Staff's essentially mid-ground proposal, including: (1) its proposed caps on cumulative cost recovery; (2) the exclusion of the Company's poorly-supported contingency costs; (3) its recommended assignment of all projected test year expenditures related to Smart Circuit and Smart Home pilot programs to CWIP, at least at this point in time; and (4) the three above-mentioned reporting requirements regarding the AMI program suggested by the Staff.[11]

[11] On pages 113 through 115 of its initial brief, the Staff also offered five recommendations regarding the way in which Detroit Edison should implement its AMI program in the future. Nevertheless, and as correctly noted by the utility, it appears that this was the first time any of these proposals were specifically mentioned in the course of this proceeding. Thus, although these requests could be approved on public policy grounds, should the Commission choose to do so, the ALJ does not feel that he is at liberty to rule on their appropriateness due to the absence of supporting record evidence.

Thus, for the April 1, 2011 through March 31, 2012 test year, the ALJ finds that the Commission should include $71,564,000 of AMI expenditures (both historical and projected) as part of Detroit Edison's rate base. In addition, he recommends including $5,447,000 and $2,650,000 of the expenditures arising from the utility's Smart Circuit and Smart Home pilot programs as CWIP, respectively, each with corresponding AFUDC offsets.

4. Miscellaneous Net Utility Plant Issues

Three additional issues concerning net utility plant have arisen in the course of this proceeding, one of which has led to a significant amount of discussion (at least by one of the parties), while the other two appear to be largely accepted by both Detroit Edison and the other intervenors.

As for the first, The Attorney General contends that, based on testimony provided by Mr. Coppola, significantly reduced levels of capital expenditures should be adopted, and factored into the overall level of net utility plant, for:

> Distribution operations, fossil generation, environmental projects, hydraulic generation, steam generation, plant capacity utilization, nuclear generation, security systems, nuclear fuel costs, projected expenses to obtain an operating license for a new nuclear power plant, customer service and marketing, [and the] corporate staff group.

Attorney General's initial brief, p. 26 (citing 10 Tr 1800-1817). Specifically, he asserts that the utility's projected rate base expenditures should be reduced by a total of $497,700,000. Id., p. 27. This assertion is in stark contrast to that of the Staff, which specifically accepted the methodology used to the utility to develop its rate base projection, albeit with the previously-addressed reductions concerning reliability-based and AMI-related spending. See, Staff's initial brief, p. 8.

In direct opposition to the Attorney General's assertions, the Company provided a detailed analysis of why its projected expenditure levels were reasonable with regard to projected: (1) "Fossil Generation Plant Improvement" costs; (2) capital expenditures arising from improvements to both the Fermi 2 Nuclear Generating Station itself, and various security system upgrades; (3) various distribution and sub-transmission system maintenance costs and improvements, including those intended to provide for customer advances for connections, the Woodward Rail Line, and Detroit Edison's electric vehicle program; (4) fuel supply and Midwest Energy Resources Company [MERC] capital costs; and (5) administrative and general [A&G] capital expenditures related to the utility's Customer Round Up project, office space renovation, and software improvement project. See, Detroit Edison's initial brief, pp. 38-43, 48-50, 60-63, and 72-74.

Upon review of the testimony offered by the various parties, the ALJ agrees with the Detroit Edison and the Staff, and finds that the utility's projected cost levels for each of the areas in question are better supported than the figures supplied by the Attorney General's witness. As a result, it is recommended that the Commission adopt (again, solely for purposes of this rate case) the net plant expenditure levels proposed by the Company for inclusion in the rate base figure used for computing rates in this case.

The second miscellaneous issue to be addressed is the Staff's suggestion that, in place of Detroit Edison's projected level of $4,460,000 for plant held for future use, the figure of $986,000 should be adopted, albeit with a countervailing adjustment of $257,000. The Staff's reduced cost level corresponds to the lease on the real estate intended for one of the utility's wind turbine projects, which (unlike the other elements of the Company's suggested plant held for future use) "is expected to be in service within a reasonable timeframe (e.g., by May 15, 2015)." Staff's initial brief, p.15. ABATE expressed agreement with the Staff's proposal to effectively transfer $3,217,000 of plant held for future use to non-utility property. See, ABATE's reply brief, p. 2.

The ALJ agrees with the Staff and ABATE on this issue for the following three reasons. First, and as correctly noted by Staff witness Yerva C. Talbert, "the Belle River Fly Ash Site, the Greenwood Site, and the Four Distribution Sites have all been held for future use since early 1970." 11 Tr. 2165. 41 years is, at least in the eyes of the ALJ, far too long to simply leave an asset in the category of "plant held for future use." Second, the record provides no solid expectation regarding when these particular pieces of real estate will actually be transferred to active service (thus justifying their transfer to Account 121, Non-Utility Property, from which they can be transferred back to rate base if and when it is conclusively shown that they are actually needed for utility operations). Third, with regard to both the Tamrack Substation property and the Western Wayne Service Center land, Ms. Talbert points out that because "there was no corresponding reduction to plant held for future use," her proposal for a countervailing $257,000 adjustment is needed to avoid "a double count of plant property." Id.

The third and final issue to be addressed with regard to net utility plant involves the matter of depreciation. In this regard, the Staff supports including in the calculation of net plant an accumulated depreciation and amortization figure of $6,464,110,000, which represents a $16.4 million reduction in accumulated depreciation (as well as a $32.2 million decrease in depreciation expense) from the Company's "as-filed" figures. See, Staff's initial brief, p. 15. As explained earlier (in footnote 6 on page 11 of this PFD), the Commission's June 16, 2011 order in Case No. U-16117 established new depreciation rates for application by Detroit Edison once the final order is issued in the present general rate case. Again, because that order adopted a majority of the Staff's proposals regarding accumulated depreciation and depreciation expense, the ALJ finds that the Staff's figures should be applied in this proceeding, at least on a preliminary basis. It is therefore recommended that the Commission apply the Staff's proposed accumulated depreciation level of $6,464,110,000 when establishing the net plant figure for use in this proceeding, notwithstanding any adjustment needed to make the various depreciation rates precisely match those approved in Case No. U-16117.

B. Working Capital

Working capital is the amount of funds required to bridge the gap between the time of payment of a utility's expenses and the receipt of revenues from its customers. In the present case, Detroit Edison and the Staff propose slightly different figures for the Company's working capital allowance. Based on the balance sheet approach approved by the Commission's June 11, 1985 order in Case No. U-7350, the utility projected a working capital requirement of approximately $592.4 million for the test year ending March 31, 2012. The Staff, on the other hand, proposed setting the Company's working capital figure at $514.8 million.

The difference between the Staff's calculation and Detroit Edison's is based on the proposed disallowance of: (1) the utility's investment with Mellon Bank that corresponds to DTE's liability for certain non-qualified benefit plans, (2) $11.6 million in deferred gain from the MGM land sale that occurred in 2005, and finally (3) $1.7 million in deferred compensation (which is designed to match the Staff's proposed disallowance regarding O&M expense). See, Staff's initial brief, p. 16. In support of the first disallowance, the Staff points out that its proposal matches the Commission's long-standing refusal to include these non-qualified plans in the Company's ratemaking structure. See, Id., p. 17 (citing the Commission's orders in Cases Nos. U-15244 and U-15768). Moreover, the Staff notes that "the account earns interest that is recorded below-the-line" (thus supporting its disallowance from the computation of working capital), and that--notwithstanding the Company's assertion that if the trust investment is removed from working capital, the related liability must also be removed from the computation of rates in this case--inadequate support was provided in this proceeding to safely assume that a countervailing liability was, indeed, included as part of Detroit Edison's computation of its asserted revenue deficiency. See, Id.

Although not directly rebutting the second and third disallowances suggested by the Staff (at least as they pertain to rate base), the utility does take issue with the proposed treatment of its Mellon Bank investment. Specifically, the Company "disagrees because its benefit plans are designed to retain skilled executives and the non-qualified plans are a component of its total compensation package," thus aiding its ability to recruit and retain talented executives. Detroit Edison's reply brief, p. 5. Still, Detroit Edison continues, "if . . . the Commission were to agree with [the] Staff that the program assets should be removed as a working capital requirement, the related liability of $63.6 million in [its] working capital forecast must also be removed," thus ensuring that "the complete working capital requirement for the non-qualified benefit plan is removed." Id. (citing 7 Tr 1137). This, the Company contends, corresponds to its assertion that "if the Commission adjusts [Detroit] Edison's average rate base, then [it] should make a corresponding adjustment to capitalization so that the approved rate base amount is supported by an equal capitalization amount." See, Id., p. 6 (citing footnote 10). To do otherwise, the utility argues, would violate the "fundamental regulatory principle that total assets must equal total liabilities." Id.

The Staff takes issue with that argument, and recommends that the Commission reject Detroit Edison's assertion that capitalization must always equal rate base. In doing so, the Staff reiterates that "working capital is developed using the balance sheet approach authorized in Case No. U-7350," and that this particular approach has historically produced "a reasonable estimate of working capital requirements." Staff's reply brief, p. 10. Moreover, "under the balance sheet approach," the Staff continues, "it is not guaranteed that the Company's capitalization will equal rate base." Rather, and as noted by one of its witnesses on this matter, Kavita B. Bankapur:

> As is often the case in Michigan, total capitalization and rate base seldom align dollar for dollar. As such, it should be noted that Staff's capital structure and corresponding cost rate estimates are developed in order to determine a just and reasonable overall rate of return to be applied to the utility rate base. Further, under the Staff's process, the income requirement for the utility is determined through the rate base as opposed to the capital structure.

11 Tr 2230. Along these same lines, another of the Staff's witnesses, Ms. Talbert, pointed out that:

> Under the balance sheet approach, it is not guaranteed that the Company's Capitalization will equal rate base. Detroit Edison appealed the Commission's decision on a similar issue, in Case No. U-13808, to the Court of Appeals and the Court upheld the Commission's decision.

11 Tr 2166. In that case, the Staff notes, the Court concluded that "the total impact of the [Commission's] decision regarding Edison's rate base and capitalization is not unjust or unreasonable." Staff's reply brief, pp. 10-11, citing Attorney General v Public Service Comm., 276 Mich App, 235 (2007). As a result, the Staff contends that the

Commission should approve each of its three proposed disallowances with regard to working capital, and adopt its figure of $514.8 million for use in this case.

The ALJ finds the Staff's arguments on this point superior to those offered by the utility. When addressing this issue in one of Detroit Edison's recent general rate cases, the Commission concluded that:

> [The utility's] continuing objections to the Commission's approved method for calculating working capital are not well taken. By insisting that there should be a precise match between assets and liabilities, Detroit Edison elevates form over function and ignores the fact that calculation of working capital and estimation of the elements of capital structure are two distinct inquiries with different methodological approaches. The Commission is not creating, auditing, or approving a financial statement where, indeed, assets equal liabilities. [Rather], the purpose of the Commission's endeavor is to set just and reasonable rates that are fair to both ratepayers and the Company.

December 23, 2008 order in Case No. U-15244, p. 11. Because the Staff's approach to calculating working capital requirements complies with the orders issued in Case Nos. U-7350, U-15244, and U-15768, the ALJ recommends that the Staff's working capital figure, $514.8 million, be adopted by the Commission for the test year in question.

The final issue regarding working capital was raised by one of ABATE's two witnesses, Mr. Selecky, who recommended that--in Detroit Edison's next general rate case--the Commission require the utility to switch from using the balance sheet methodology to using the "lead-lag" study[12] as the basis for "[determining] the cash working capital component of total working capital." See, ABATE's initial brief, p. 3

[12] As described by Mr. Selecky, a lead-lag study compares the number of days that the utility actually takes to make payments after receiving goods and services from a vendor, on the one hand, with the number of days it takes the utility to receive the payments for providing service to its ratepayers. See, 9 Tr 1467. Generally, he noted, "the difference between the expense lags and the revenue lags" is multiplied by the utility's average daily expenses to determine the total amount of cash working capital required by the utility for its day-to-day operations. 9 Tr 1467. That figure is then added to each component of working capital, including "materials and supplies, fuel inventory, and prepayments" to determine the utility's total working capital requirement. Id.

(citing 9 Tr 1465-1470). According to Mr. Selecky, he estimated the Company's cash working capital component to be approximately $260.6 million, which he found to be excessive when compared to that of other utilities, who he found to average only $6.8 million based on his case reviews. See, Id., p. 4. Although noting that the utilities he studied had much smaller jurisdictional revenue levels than Detroit Edison, even increasing their average cash working capital component 10 fold would still result in a figure "$190 million less than [Detroit Edison's] request." 9 Tr 1469.

Both Detroit Edison and the Staff oppose ABATE's suggested change from the balance sheet process for determining working capital to the lead-lag methodology. Although noting that the Commission's decision to adopt the balance sheet method occurred over 25 years ago, the utility points out that the current methodology was specifically found to be "a superior alternative over the lead/lag study alternative," and "was even recommended by ABATE" in the course of that case. Detroit Edison's reply brief, p. 6 (citing the Commission's June 11, 1985 order in Case No. U-7350, p. 5). Moreover, these parties contend that not only would ABATE's proposal conflict with the Commission's previous rulings on this issue, it (1) is based exclusively on "a simplistic comparison" of the cash working capital of utilities located in "only a handful of states," (2) fails to consider whether those companies include other costs in their total working capital figures, and (3) would also impose an undue burden on the parties to cases processed pursuant to Act 286. Id., p. 7; Staff's reply brief, pp. 11-12.

The ALJ finds the assertions offered by the utility and the Staff persuasive on this issue. The Commission previously ordered a hearing to consider and adopt what it concluded would be the best methodology for use in determining utilities' working capital requirements. In the course of that proceeding, both the balance sheet approach and the lead-lag methodology were considered. See, i.e., the June 11, 1985 order in Case No. U-7350, pp. 2-3. In the end, it was decided that the balance sheet approach would be the fairest and most equitable methodology for ratepayers, the utilities, and those companies' respective shareholders. Id., p. 12. Specifically, the Commission concluded that the balance sheet approach would avoid the complex and time-consuming calculations that would be necessitated by adoption of the lead-lag approach. See, Id., pp. 11-12. As correctly noted by the Staff, the extraordinarily tight time constraints imposed by Act 286 would make it "even more difficult to perform the complex and time consuming analysis that the lead-lag approach requires, [at least] on a timely basis." Staff's reply brief, p. 12. Therefore, the ALJ recommends that the Commission reject ABATE's request to require use of the lead-lag methodology in Detroit Edison's next general rate case.

C. Conclusion

In light of the discussion and recommendations set forth above, the ALJ finds that Detroit Edison's total electric rate base should be set at $10,067,825,000. This level, which incorporates all of the above-mentioned adjustments and which is depicted on Exhibit A-29, Schedule 7, is computed as follows:

Net Utility Plant	$9,553,015,000
Working Capital Allowance	514,810,000
Total Rate Base	$10,067,825,000

IV.

CAPITAL STRUCTURE, COST OF CAPITAL, AND RATE OF RETURN

As noted in previous Commission orders, the criteria for establishing a fair rate of return for utilities like Detroit Edison stems from the decisions issued by the United States Supreme Court in Bluefield Water Works Co. v Public Service Comm. of West Virginia, 262 US 679 (1923), and Federal Power Comm. v Hope Natural Gas Co., 320 US 591 (1944). In those cases, (generally referred to as "Bluewater" and "Hope"), the Court made clear that when establishing a fair rate of return for a public utility, consideration must be given to both customers and investors. As stated in one of Detroit Edison's recent rate cases, the rate of return "should not be so high as to place an unnecessary burden on ratepayers, yet should be high enough to ensure investor confidence in the financial soundness of the enterprise." December 23, 2008 order in Case No. U-15244, p. 12. Still, the Commission went on to note, any determination of what is fair and reasonable "is not subject to mathematical computation with scientific exactitude but [rather] depends upon a comprehensive examination of all factors involved, having in mind the objective sought to be attained in its use." Id., [citing Meridian Twp. v City of East Lansing, Mich., 342 Mich 734, 749 (1955)].

With these time-tested principles in mind, we turn to the factors forming the basis for what rate of return should be adopted in this particular proceeding. Specifically, to reasonably estimate Detroit Edison's revenue requirement, it is necessary to select a rate of return to be applied to the utility's rate base. This involves a two-step process. The first is determining the appropriate capital structure, that is, the relative percentages of debt, equity, and deferred income taxes used to fund the utility's overall operations.

The second is determining the proper cost rate for each component of the capital structure.

Despite differing views regarding what rate of return should be established in this case,[13] the parties have been able to reach agreement concerning several components of Detroit Edison's capital structure and the respective costs of the utility's sources of capital.[14] As a result, the only areas of contention that must be addressed in this PFD concern (1) the Attorney General's recommendation to add approximately $60.9 million in short-term debt to the utility's capital structure (in addition to his--as of now--moot request to match the total capitalization included in the Company's capital structure to his much lower level of proposed rate base); (2) the estimate of the company's long-term debt cost; (3) the cost of short-term debt to be included in the capital structure, and whether rates adopted in this order should also include certain commitment/credit facility fees in the amount of $1.1 million; and (4) the appropriate return on common equity to be approved in this proceeding, as well as whether that approved figure should include floatation costs. Each of these four issues is addressed below.

A. Capital Structure

Detroit Edison proposed the use of a permanent capital structure consisting of approximately 51% debt and 49% equity. According to the utility, this would be

[13] While Detroit Edison claims that its weighted, after-tax overall rate of return should be 6.865%, the Staff suggests using 6.44% and the Attorney General asserts that 6.406% should be adopted. See, Detroit Edison's reply brief, p. 7; Staff's reply brief, p. 14; and Attorney General's initial brief, pp. 29-30.

[14] Notwithstanding the fact that (because they were based on the parties' respective "as-filed cases"), the specific dollar values attached to each component of Detroit Edison's capital structure will vary from what is recommended in the PFD, as well as actually approved by the Commission's final order in this case, those percentages should remain relatively consistent throughout, thus allowing the utility, the Staff, and any interested party to make the final calculation once the Commission issues its order.

“consistent with its capital structure in the 2009 test year,” would match that adopted by the Commission in the January 11 order, and would conform to the Company’s long-range plan to use “additional equity infusions and retained earnings to maintain at least 49% equity.” Detroit Edison’s reply brief, p. 7 (citing 6 Tr 177, 180, 191, and 200, as well as Exhibit A-11, Schedule D1). With the exception of two changes sought by the Attorney General, none of the other parties appear to disagree with that proposal, and each of the parties seems comfortable using the permanent capital structure percentages recommended by the utility.

Moreover, the first of the Attorney General’s proposed adjustments, by which he sought to significantly reduce the dollar values assigned to the utility’s capital balances, is easily dispensed with. As reflected on Exhibit AG-26, line 11, he requested that the total capitalization for the Company be reduced to a level matching his request to cut Detroit Edison’s as-filed rate base by just under $570 million. Because the Attorney General’s request to do so was rejected in the previous section of this PFD, any arguments along those lines are also moot as they pertain to capital structure issues.

Nevertheless, it does appear that his second proposal should be adopted. In this regard, Attorney General witness Coppola recommended adding a short-term debt figure of $60.9 million to the Company’s as-filed capital structure. This was based on the fact that, although the utility initially indicated that “it did not anticipate using short-term debt during the projected test year, updated information obtained through discovery reveals that “for the 13 months ended March 2012, [Detroit Edison now thinks] it will have an average amount of short-term debt of approximately $60.9 million.” 10 Tr 1818 (citation omitted). Based on this uncontroverted testimony, the ALJ agrees with the Attorney General and recommends that the Commission adopt a capital structure for Detroit Edison that, while retaining all other capitalization levels and percentages proposed by the utility, also includes this $60.9 million of short-term debt.

B. Cost of Long-Term Debt

One of Detroit Edison's witnesses regarding its capital structure and its related cost components, Donald J. Goshorn, estimated that the utility's weighted long-term debt cost as of March 31, 2012 would be 5.58%," which he computed based on a net proceeds basis. 6 Tr 197. Moreover, Mr. Goshorn asserted, application of the net proceeds method is necessary to account for the "underwriters' compensation and other financing expense [items] . . . as a reduction in proceeds from the issuance of new securities." Id. In contrast, Staff witness Bankapur estimated the utility's long-term debt rate for the test year would be only 5.53%, based on the long-term debt rates published by Global Insight. See, 11 Tr 2231. According to Ms. Bankapur, "the difference in cost rates is mainly due to the coupon rate for the long-term debt expected to be issued by the Company in March 2011 and September 2011." Id.

On rebuttal, Mr. Goshorn noted that the Staff had assumed a 10-year term for the new debt, while the Company assumed a 20-year term. He went on to point out that:

> While the term of the new debt is not yet known, and Detroit Edison has issued 10-year debt in the past, the majority of Detroit Edison's long-term debt issuances have a 30-year term. [Thus,] It is reasonable to assume that the new debt could be issued in a term longer than 10 years which would have a higher interest rate.

6 Tr 204. Nevertheless, the Staff maintains that the 10-year term it assumed "is a reasonable estimate given that the Company's most recent debt issuances during 2010 were at the 10-year duration." Staff's initial brief, p. 19. It therefore recommends that

the Commission adopt Ms. Bankapur's proposed long-term debt cost rate of 5.53%. The only other party to weigh in on this issue, specifically the Attorney General, stated that he "can accept the Staff's lower [rate] for long-term debt," despite acknowledging that there also is "an evidentiary basis for the long-term debt rate" suggested by the utility. Attorney General's reply brief, p. 8.

The ALJ finds it to be more likely than not that a majority of Detroit Edison's issuances of long-term debt during the projected test year will have a term at or below the 10-year level. As reflected in the utility's own exhibits, each of its 4 largest debt issuances during the prior 3 years (ranging from $250 to $300 million each) had terms of only 5 to 10 years. See, Exhibit A-11, Schedule D2, lines 29, 30, 35, and 36. Moreover, while the Company did take out another 6 loans with longer durations during that 3-year span, the total debt incurred by those issuances was less than 30% of the aggregate amount of the long-term debt incurred with terms of 10 years or less. See, Id., lines 31-34, and 37-38. The ALJ therefore recommends that the Commission adopt for use in this case the 5.53% long-term debt rate advocated by the Staff.

C. Short-Term Debt Cost

As another input in calculating its rate of return, Detroit Edison proposes to use a short-term debt cost of 1.00%, plus "$2.3 million of facility fees for the cost of related credit facilities, which are reflected as a component of [the utility's] operating costs." Detroit Edison's initial brief, p. 24 (citations omitted).

In contrast, the Attorney General's witness on this issue suggested removing all of the credit facility fees (which parties sometimes refer to as commitment fees) from O&M expense, and including them in the calculation of the Company's short term debt cost. Doing so, the Attorney General notes, would increase that cost rate to 4.8%. See, Exhibit AG-25. The Staff, on the other hand, recommends using 0.78% as the cost of short term debt, while excluding $1.1 million of the facilities/commitment fees requested by Detroit Edison. With regard to its proposal to reduce the cost rate from the utility's proposed level, the Staff states that this "is mainly due to timing differences in reviewing rate forecasts." Staff's reply brief, p. 16. As for its suggestion to exclude of $1.1 million in related fees from O&M expense, it notes that those fees arise from the "continued amortization of upfront expenses associated with a terminated [credit] facility. Id.

With regard to the cost rate assigned to short-term debt, the ALJ finds that, because the Staff's proposed figure of 0.78% is based on more recent data than that relied upon by the Company, it is likely the more accurate of the two.[15] Therefore, it is recommended that the Commission adopt the Staff's figure for use in calculating Detroit Edison's short-term debt cost.

As for the second issue, the ALJ also concludes that the Staff's position is preferable to that outlined by either the utility or the Attorney General. According to the Staff, it "did not exclude the $1.1 million of commitment fees based on a cost comparison of the [terminated] credit facility versus the new credit facility," as Detroit Edison apparently assumes.[16] Staff's reply brief, p. 17. Rather, it points out, the utility's

[15] A similar issue exists with regard to the cost rate to be applied to the regulatory liability for the utility's Renewable Energy Plan (REP). Specifically, Detroit Edison estimated the cost of this capital to be 1.00%, using the same basis as it did for short-term debt. See, i.e., Exhibit A-11, Schedule D3. Likewise, the Staff proposed using a cost rate of 0.78%, which (as with its suggested figure for short-term debt) differed from the utility's requested rate almost exclusively due to timing issues. Again, because the Staff's recommended cost figure is based on more recent data, the ALJ recommends that it be adopted.

[16] Specifically, the utility argues that "[the] annual cost of the terminated credit facility was $4.28 million," whereas "[the] annual cost of the new credit facility is $1.94 million." Detroit Edison reply brief, at

plan would constitute an "improper application of the Uniform System of Accounts (USOA) pertaining to amortization of debt" because, as shown on Exhibit A-11, Schedule D3, the utility "is not treating *and* reflecting these costs as short-term debt related." Id. (emphasis in original). Rather, and as correctly noted by the Staff, that exhibit simply indicates that the Company believes its short-term debt cost is 1.00%, but with no indication that this figure was adjusted to account for facility/commitment fees of any nature. Thus, the provisions of the USOA providing for the potential recovery of amortization of losses on either long- or short-term debt would not appear to apply to the costs in question, ultimately precluding their recovery as part of Detroit Edison's O&M expense. As a result, the ALJ recommends that, when computing the utility's overall O&M costs in this case, the $1.1 million in question be excluded from recovery.

D. Cost of Common Equity

A utility's cost of common equity is the return that investors expect, or--more accurately--require, in order to provide the utility with capital for use in its various operations. The cost of this capital essentially represents an opportunity cost; in order to induce investors to purchase common stock or bonds, there must be the prospect of receiving earnings that are sufficient to make the investment attractive when compared to other investment opportunities.

When a utility stands alone and its common stock is publicly traded, direct approaches can be applied to accurately estimate a fair rate of return on the utility's common equity. However, the process becomes more complicated when the utility is a subsidiary of a holding company, as is the case with Detroit Edison. Because the stock

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p. 20. As a result, the Company continues, "renewing and extending the credit facility was reasonable and prudent, and the $1.1 million of costs should be included in the cost of the credit facilities." Id.

of a subsidiary is not publicly traded, expert witnesses are forced to resort to indirect (or "proxy") approaches to estimate the utility's cost of common equity. In the present proceeding, four witnesses took on this task, two on behalf of Detroit Edison, and one each on behalf of the Staff and the Attorney General.

The utility's primary witness concerning this issue, Michael J. Vilbert, conducted multiple analyses of what he felt were similarly-situated companies. These analyses consisted of what Dr. Vilbert referred to as "the risk positioning" or "risk premium" approaches, which--he notes--are based on the Capital Asset Pricing Model (CAPM) and Empirical CAPM, as well as the Discounted Cash Flow (DCF) model. The cost of equity estimates that these various models produce are, he continues, "combined with the market value capital structure information and the market costs of debt and preferred stock for each sample company to compute each firm's overall cost of capital," which he then refers to as the company's "after-tax weighted-average cost of capital." 7 Tr 886.

According to Dr. Vilbert, the return on equity (ROE) estimates for his risk positioning model range from a low of 9.6% to a high of 10.9%, and that "using Bloomberg betas," the ROE estimates for this group of utility's range from a low of 10.2% to a high of 11.5%. 7 Tr 887. Nevertheless, he concluded that the estimates at the upper end of those ranges reflect the adjustment for the turmoil in the financial markets and are, thus, more reliable. As for the DCF model, Dr. Vilbert's analysis produced a range from 10.8% to 11.5%. Id. He went on to opine that:

> The best point estimate of the ROE is 10¾ percent for an electric company of average business risk and a capital structure with a 49 percent equity ratio. However, I believe that Detroit Edison has a higher risk than the average company in the electric sample, because of the

> effect of the more severe economic downturn in Michigan as well as for [various] Company-specific reasons.

7 Tr 888. Based on that analysis, he recommended an adopting an "ROE of 11%, with a range of 10½ to 11½ percent." Id.

The Company's second witness with regard to the utility's cost of common equity, Mr. Goshorn, agreed with the analysis provided by Dr. Vilbert, but went on to assert that his recommended figure of 11% should be increased to recognize the recovery of flotation costs, which Mr. Goshorn defines as "costs a company incurs when it raises equity in the public market . . . [in the form of] fees paid to underwriters and providers of legal, accounting, printing and other services related to the issuance of equity." 6 Tr 191-192. According to this Company witness, Dr. Vilbert's recommended ROE "should be increased to 11.125% (an increase of 1/8%) to reflect the recovery of equity flotation costs." 6 Tr 194.

Based on the testimony of its two witnesses, the utility contends that its approved rate of return on common equity should be set at 11.125%. See, Detroit Edison's initial brief, p. 25. Nevertheless, the Company goes on to assert that, should the Commission fail to renew the CIM, the approved ROE should be boosted by another 25 basis points (to 11.375%) because, according to Dr. Vilbert, the utility could "incur a significant loss in margin by customers having the option to switch freely between market and cost-based rates." 7 Tr 936.

In contrast, the Staff recommended adopting an ROE of 10.15%, which was roughly the mid-point of the 9.85% to 10.35% range provided by its cost of common equity witness, Kirk D. Megginson. According to Mr. Megginson, his analysis began by identifying five criteria designed to ensure that the proxy group used in estimating Detroit Edison's ROE was highly representative of the utility itself. These were:

> (1) each electric company had to have net plant in excess of $3 billion to better compare to the size and footprint of Detroit Edison; (2) each company had to derive 60% or more of its revenues from regulated electric service; (3) each utility had to have a minimum investment grade credit rating within two notches of Detroit Edison's rating based on ratings from Standard & Poor's (S&P) and Moody's; (4) each company had to currently be paying dividends to shareholders; and (5) each company could not be currently involved in a merger, buyout or major acquisition.

11 Tr 2146. Based on those relatively narrow criteria, he assembled a list of 11 electric utility companies, which is set forth on Exhibit S-4, Schedule D-5.

Noting that "a single cost of equity model does not provide an exact measure of a fair [ROE] for a utility," Mr. Megginson employed several models in conducting his analysis, most of which matched those relied upon by Detroit Edison's witnesses. Staff's initial brief, p. 22. Specifically, he used the DCF model (which produced an estimate of 8.82%), a CAPM model (which provided a range of estimates from 8.809% to 9.4%, depending on the time frame of used in evaluating the market return), and a Risk Premium model (resulting in a range from 9.94% to 10.35%). <u>See</u>, 11 Tr 2147-2152. Mr. Megginson then reviewed "the average authorized rate of return decisions on a quarterly basis from [Commissions] across the country between the years 1990 through 2010" as an additional check on the reasonableness of the his other models' ROE results. 11 Tr 2152. That review showed an average ROE of 10.36% for the most recent 5-year period. <u>See</u>, <u>Id</u>. When taken together, he asserts, these various analyses show that the Staff's ROE recommendation of 10.15% provides the Company with a reasonable return on common equity that is commensurate with other investments of comparable risk, while still offering Detroit Edison an opportunity to maintain or improve its credit rating and attract capital. 11 Tr 2153. Finally, the Staff asserts that, based on prior Commission orders, no floatation costs should be recovered in this case. ABATE agreed with the Staff's analysis, and asserted that because of currently low interest rates, among other factors, 10.15% was reasonable. ABATE's reply brief, p. 2.

The final party to offer testimony regarding the cost of common equity was the Attorney General, whose witness--namely, Mr. Coppola--offered testimony supporting an ROE of 10.25%. See, 10 Tr 1822-1823. Nonetheless, the Attorney General "now believes that the 10.15% rate recommended by the Staff provides a better balance between the interests of ratepayers and the interests of the Company." Attorney General's reply brief, p. 8. According to him, the 10.15% rate "is also justified by the fact that [the] Staff is recommending no adjustment to [Detroit Edison's] ROE to reflect the impact of revenue decoupling and other trackers on the ROE" that is ultimately authorized in this proceeding. Id.

While offering no testimony on this issue, ABATE "urges the Commission to adopt [the Staff's 10.15%] return[17] for the reasons stated by the Staff, and because of the current low interest rate environment, the economic stress faced by [the utility's] customers," and various other factors. ABATE's reply brief, p. 2. Specifically, ABATE continues, Act 286 itself has reduced the utility's overall business risk to the point where its ROE should be lower than its previously-authorized level. See, Id.

The last party to specifically address this matter was Wal-Mart, who asserted that if the Commission ultimately rejects the utility's proposed switch to an RDM that is

[17] Although initially stating "that it supports the Staff's position that the ROE should be set at 10.10%," which is the precise mid-point of the Staff's recommended range, ABATE subsequently realized that the Staff's specific request was for a level slightly higher than that mid-point. Compare, ABATE's initial brief, p. 6 with ABATE's reply brief, p. 2.

based exclusively on sales reductions resulting from its EO activities, some reduction to Detroit Edison's ROE should ensue. See, Wal-Mart's reply brief, pp. 7-10. According to Wal-Mart's witness, Steve W. Chriss, a number of other jurisdictions have apparently made reductions to the ROE levels authorized for regulated utilities based on the implementation of RDM, and that any increase in the scope of RDM should, likewise, have a downward effect on Detroit Edison's ROE. See, 8 Tr 1239-1241.

Turning first to the issue of floatation costs, the ALJ agrees with the Staff that such costs should not be factored into Detroit Edison's cost of common equity (and ultimately collected from the utility's ratepayers). As noted by the Staff, the Commission specifically addressed the matter of floatation costs through its November 23, 2004 order in Case No. U-13808, where it concluded that because a different subsidiary of DTE (namely, Michigan Consolidated Gas Company [Mich Con]) was--like Detroit Edison--not a publicly traded company, it never actually incurs floatation costs. Rather, any such costs would be incurred exclusively by DTE, who issues all new common equity needed to fund the operations of its various subsidiaries and, one would assume, is therefore allowed to deduct those costs when computing its taxes. Moreover, as the Staff further notes, the Commission did not allow Detroit Edison to recover any of its requested floatation costs in its previous rate case. See, Staff's reply brief, p. 20. Thus, as in the past, it is recommended that the Commission not make the upward adjustment for floatation costs requested by Detroit Edison.

As for the broader issue, specifically what cost level should be assigned to common equity in this proceeding, the ALJ concludes that the Staff's range (from 9.85% to 10.35%) appears more reasonable than that suggested by Detroit Edison. Although the utility assails the Staff's ROE analysis, primarily on the grounds that its proxy group sample selection was flawed, the record supports the opposite conclusion.

As correctly asserted by the Staff, the proxy group selected by Mr. Megginson was, although smaller than that used by Detroit Edison's ROE witness, more closely aligned with the particular attributes of the utility in question. Specifically, the companies comprising his test group all had a large amount of net plant (i.e., over $3 billion each), derived a majority of their revenue from the provision of regulated electric services, and were currently paying dividends. See, 11 Tr 2146. Most importantly, each had credit ratings from S&P and Moody's that were close (if not identical) to those of Detroit Edison. As Mr. Megginson pointed out, this is pertinent because:

> When ratings agencies decide on a credit rating for a utility, they take into consideration a multitude of business and financial factors, including but not limited to, the business climate of the utility's service territory, the state the utility operates within, the current and forecasted economic conditions of the state, the regulatory environment the utility operates within, relevant legislation that currently affects or may affect the utility, peer group comparisons, sector comparisons, as well as internal company characteristics such as company management, cash flow adequacy, leverage, capital on hand, available access to capital markets, key financial ratios, and other relevant items.

11 Tr 2143. "The due diligence imposed by rating agencies" when setting a utility's credit rating is, as Mr. Megginson testified, important because it provides confidence that the Staff's ROE recommendation--being based on the use of a comparable proxy group--is "a solid representation of the required return on equity for the Michigan jurisdictional utility under review." 11 Tr 2144.

The Commission has recently offered support for this approach. For example, in Consumers Energy Company's (Consumers) most recent electric rate case, it held that:

> The Commission is persuaded that the Staff's analysis appropriately reflects Consumers risk environment and required rate of return. The Staff's proxy group had an average S&P bond rating of BBB+ and an average Moody's bond rating of A3. These credit ratings are identical to that of Consumers and consider a multitude of financial and business risk factors including the effect of the local, state, and national economic conditions, utility service territory, regulatory environment, cash flow adequacy, liquidity, peer comparison, and competitive position, among many others. Accordingly, the Commission finds that the Staff's analysis is the most reasonable and reflective of the company's financial position.

November 4, 2010 order in Case No. U-16191, p. 28.

Yet another factor supporting adoption of the Staff's proposed ROE over that suggested by Detroit Edison is the effect that Act 286 has had on utility risk over the past few years. As noted at various points in this PFD, Act 286 (1) allows Michigan utilities to use projected test year revenues, expenses, and sales volumes in support of any requested rate increases, (2) provides for the possibility of self-implementation of all or part of a requested rate change within 180 days following submission of an application, (3) requires that the Commission issue a final order concerning the application within 365 days from its filing, lest the request be automatically implemented, and (4) restricts the amount of retail choice to 10% of a utility's total sales. These changes in Michigan's regulatory framework, which tend to lean heavily in favor of the utilities and their investors by significantly reducing the risk borne by such companies in the past, necessitate taking a conservative approach with regard to the specific ROE authorized in rate cases like this.[18]

[18] While it is possible--and maybe even likely--that the retention of RDM and other tracking mechanisms could also serve to reduce Detroit Edison's risk (as argued by Wal-Mart and several other parties), the degree to which any one mechanism would do so is, as of this date, difficult to assess. As a result, the ALJ's recommendation to adopt 10.15% as the Company's ROE for the test year in question does not factor in either the retention or the suspension of any tracking mechanism relating to this utility.

The ALJ thus recommends that the Commission adopt the 10.15% ROE proposed by the Staff and ultimately supported by both the Attorney General and ABATE.

E. Conclusion

Based on the discussion set forth above, the ALJ concludes that, at least for purposes of this PFD, the most reasonable overall rate of return to adopt for Detroit Edison is 6.411%. In doing so, it is recognized that this figure will likely need to be adjusted slightly to reflect both (1) the various changes in depreciation engendered by the June 16, 2011 order in Case No. U-16117, and (2) deferred income tax, due to slight differences between the total rate base recommended in the PFD and that assumed by the parties when offering their testimony regarding the cost of capital. In any event, and as discussed above, the ALJ recommends that Detroit Edison's overall rate of return should be set (at least on an approximate basis) at 6.411% as reflected in the following calculation:

PERMANENT CAPITAL STRUCTURE

Description	Amount	Ratio	Cost Rate	Weighted Cost
Long-Term Debt	$ 4,216,493,000	50.79%	5.530%	2.809%
Common Equity	$ 4,084,742,000	49.21%	10.150%	4.995%
Total Perm. Capital	$ 8,301,235,000	100.00%		7.804%

RATEMAKING CAPITAL STRUCTURE

Long-/term Debt	$ 4,216,493,000	41.31%	5.530%	2.284%
Common Equity	$ 4,084,742,000	40.02%	10.150%	4.062%
Short-Term Debt	$ 60,900,000	0.60%	0.780%	0.005%
Reg. Liability – REP	$ 182,976,000	1.79%	0.780%	0.014%
Deferred Inc. Tax	$ 1,602,180,000	15.70%	0.000%	0.000%

JDITC				
Long-Term Debt	$ 30,327,000	0.30%	5.530%	0.016%
Common Equity	$ 29,383,000	0.29%	10.150%	0.029%
Total JDITC	$ 59,710,000			0.045%
TOTAL	$10,207,001,000	100.00%		6.411%

V.

ADJUSTED NET OPERATING INCOME

In order to determine whether a revenue deficiency or excess exists for a regulated utility like Detroit Edison, it is necessary to establish the utility's adjusted net operating income for the test year. Adjusted Net Operating Income (NOI) expresses, at least in the present case and in the most basic terms, the difference between the Company's projected test year operating revenues and expenses.

In the present case, Detroit Edison asserts that for the 12 months ended December 31, 2009, its total adjusted NOI was $631 million, which equated to $635 million on a jurisdictional basis. See, Exhibits A-1, Schedule A1 and A-3 Schedule C-1. However, as reflected in its as-filed case, the utility estimated that its adjusted NOI for the projected test year ending March 31, 2012, would likely be only $425 million on a total company basis (and $424.4 million on a jurisdictional basis). See, Exhibits A-8, Schedule A1 and A-10, Schedule C1. This significant decline in projected NOI is, according to the Company's witness on this issue, Theresa M. Uzenski, due to:

> [I]increases in depreciation related to capital additions, O&M inflationary increases, [higher] operating costs to comply with environmental standards, increases in benefit costs, and declining service area sales, partially offset by [Detroit] Edison's cost reduction programs and the impact of new rates approved by the Commission in Case No. U-15768.

7 Tr. 1107-1108.

In contrast, the Staff projects that the utility's adjusted NOI will be $550,980,000 on a total company basis. According to the Staff, that projection (which would greatly reduce any potential revenue deficiency in this case) does a better job of "[taking] into account the Commission's past treatment of the Company's expense items." Staff's reply brief, p. 20. The Attorney General goes even further than the Staff in decreasing the various expense levels projected by the Company, and thus increasing the projected level of adjusted NOI. Specifically, he contends that $149,605,000 should be added to the $424,400,000 figure proposed by Detroit Edison, resulting in a total adjusted NOI of $574,005,000. See, Attorney General's initial brief, p. 31.

A. Operating Revenues

The starting point for comparing a utility's operating revenues and expenses is the projection of its electric sales, as well as the total revenue level that they (and other utility activities) are expected to produce over the course of the test year. Here, no dispute currently appears to exist among the parties regarding either figure.

Specifically, the parties agree with the utility's assessment that its weather-normalized sales for the test year will be approximately 48,466 gigawatt-hours (GWh), from which it will receive revenue in the amount of $4,299,038,000. See, Exhibits A-12, Schedule E1, and A-10, Schedule C1. For example, although the Attorney General's witnesses initially felt that the Company had understated its test year revenues, rebuttal testimony offered by Detroit Edison convinced them to accept the utility's numbers. See, Attorney General's initial brief, pp. 30-31. As for the only other party to weigh in on this issue, the Staff "reviewed the Company's forecasted sales and found them to be reasonable." Staff's initial brief, p. 58.

Moreover, while there was initially a difference of just under $40 million between Detroit Edison's total operating revenue figure and that set forth in the Staff's case, this was due in large part to the fact that--between the date the utility filed is application and the date the Staff submitted its testimony--the Company had signed a new wholesale for resale contract with the DPLD.[19] The utility has acknowledged the effect of that contract on its test year operating revenue, and has now included it in its calculations. See, Detroit Edison's reply brief, pp. 23-24; Attachment A to Detroit Edison's initial brief.

For all of these reasons, the ALJ recommends adopting the Staff's suggested total revenue figure of $4,338,702,000 for use in this proceeding. Nevertheless, numerous differences of opinion exist among the parties regarding the level and treatment of various operating expenses. Each of those expense-related issues is discussed below.

B. Operating Expenses

Although no dispute was raised concerning a majority of the expense levels and miscellaneous financial adjustments included in Detroit Edison's initial filing, numerous issues remain to be addressed. These include various matters relating to discrete components of the utility's O&M expense, depreciation, and tax liability, among others.

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[19] It should also be noted that a small part of that $40 million adjustment was designed to account for the discount received by customers taking service under "Large Customer Contracts" instead of the otherwise applicable tariff rates. Staff's initial brief, p. 32. According the Staff, such an adjustment was necessary "to prevent tariff customers from subsidizing customers taking service under special contracts." Id. To date, the Commission has consistently refrained from allowing the discounts arising from special contracts like these to be spread to other customers. See, e.g., June 3, 2010 order in Case No. U-15985, pp. 95-97. Based on the absence of any persuasive arguments in support of treating these agreements differently, the ALJ recommends retaining them as part of this $40 million adjustment.

1. Inflation

The Company supports a portion of its requested rate increase by applying inflation adjustment factors to several of its historical O&M cost levels in an effort to project what its test year expenses will be for each of those areas. In contrast, the Attorney General's witness regarding this issue, Mr. Coppola, contends that at a time when the regional economy is weak and the Company is basically forecasting stagnant electricity sales for the reasonable future, the Commission should refuse to approve any inflation adjustments whatsoever. See, 10 Tr 1761-1764. Based on this testimony, the Attorney General supports reducing, by tens of millions of dollars, various proposed O&M figures included in Detroit Edison's presentation. See, Attorney General's initial brief, pp. 32-35. The Staff, on the other hand, takes a more moderate approach and recommends reducing the utility's overall inflation adjustment request by a total of $3,353,000. See, Staff's initial brief, p. 33.

The ALJ finds that the Staff's proposed $3,353,000 expense reduction should be adopted. As noted by its witness, Brian A. Welke, the Staff computed its test year inflation adjustments by starting with the Company's historical 2009 O&M expense levels, applying actual 2010 inflation, and then using the traditional Consumer Price Index for All Urban Consumers (CPI-U) as the assumed inflation rates for 2011 and 2012. See, 11 Tr 2275. In contrast, Mr. Welke testified, Detroit Edison "used a general labor escalator of 3% within certain [Administrative and General] O&M accounts." Id. Moreover, as correctly asserted by the Staff, the Commission has consistently approved the application of CPI-U inflation factors across all O&M accounts in prior rate cases like this. See, Staff's initial brief, pp. 33-34. Specifically, as pointed out in the utility's last general rate case, “the Commission has used the CPI-U as a reasonable measure of inflation in Detroit Edison’s most recent rate cases, Cases Nos. U-14838 and U-15244.” January 11 order, p. 29. Turning to the Attorney General’s proposal, the ALJ finds no basis for concluding that, despite the continued existence of inflation (as noted by witnesses for each of the other parties that addressed this issue), the utility should be denied reasonable cost adjustments to reflect the same. It is therefore recommended that the Commission reject the positions offered by both Detroit Edison and the Attorney General with regard to the likely effects of inflation on test year expense levels, and adopt the Staff’s proposed reduction of $3,353,00 instead.

2. Line Clearance and Other Distribution Expense

Paul D. Whitman offered the utility’s proposal regarding the appropriate level of O&M expense related to distribution activities, including line clearance costs. According to Mr. Whitman, when adjusted for inflation, the Company’s projected test year cost for all distribution-related O&M activity would total $241.7 million, with $50.7 million of that coming from line clearance efforts. See, 6 Tr 385-391. Following its review of this particular item, the Staff expressed support for the expense figure proposed by Detroit Edison. See, Staff’s initial brief, p. 33. In contrast, the Attorney General recommended that, in addition to reducing the inflation adjustment for distribution O&M expense by $7.6 million for the same reasons as rejected above, proposed spending on line clearance should be reduced by $4 million. See, Attorney General’s initial brief, p. 32.

The ALJ finds that the expense levels proposed by the utility appear reasonable and should, therefore, be approved. As noted by the Company, the Attorney General fails to note either that (1) “a major portion of the fluctuation in Distribution Operations

O&M expenses" arise from "the variation in restoration expenses, which vary considerably with the weather," and (2) this area of its operations has actually reduced its staffing levels by 19% since 2005. Detroit Edison's reply brief, p. 48. Similarly, the Attorney General fails to mention that, although the Company's Distribution Operations Section's overall costs are--to a large degree--"subject to contractually obligated labor increases that exceed general inflation rates," test year cost projections for this area adhered to the CPI-U previously adopted for use in this case. Id. The ALJ therefore recommends that the Commission approve Detroit Edison's projected line clearance and other distribution expense levels for the test year ending March 31, 2012.

3. AMI-Related O&M Expense

In the Section of this PFD dealing with net utility plant, it was recommended that the Commission approve (subject to several limitations suggested by the Staff) Detroit Edison's next round of capital expenditures with regard to its combined AMI, Smart Grid, and Smart Home program. In addition to those capital expenditures, the Company points out that some level of O&M expense will also be incurred, albeit with offsetting costs savings arising from the program's operation, (most of which savings "relate to meter reading expenses"). Detroit Edison's reply brief, p. 50 (citing 6 Tr 685-686). Both the projected costs and countervailing savings resulting from implementation of this program are reflected on Exhibit A-10, Schedule C5.13.

Despite the previously-discussed disputes involving the expansion of this program, none of the parties appears to have expressed specific opposition to the AMI-related O&M expense the utility seeks to recover in this proceeding.[20] Based on the record, and in light of the lack of opposition to Detroit Edison's proposal in this regard, the ALJ recommends adopting the utility's projected AIM-related O&M expense level.

4. Fossil, Hydraulic, and Nuclear Generation Expense

Beyond the issue of whether, and to what degree, Detroit Edison should be making capital expenditures regarding its allegedly "marginal" units, system reliability, AMI, or any of the 10 areas listed on page 26 of the Attorney General's initial brief (all of which were addressed earlier), he asserts that many O&M costs relating to the utility's other fossil, hydraulic, and nuclear generation activities should be either reduced or eliminated. These include his recommendation to lower test year O&M expense through a reduction in staffing levels by delaying planned environmental monitoring and boiler tube replacement projects for the Monroe plant, as well as cutting O&M expenses related to the relocation of spent nuclear fuel (SNF) from the current on-site water pool to newly-completed dry casks. Attorney General's initial brief, pp. 33-34. Moreover, he appears to propose reducing the cost of nuclear fuel itself.[21] As for MCAAA, it recommends (1) disallowing all dues paid to the Nuclear Energy Institute (NEI) on the grounds that NEI is primarily a lobbying group, (2) finding that Detroit Edison has not

[20] Although ABATE contends that ratepayers should not be forced to pay millions of dollars in "capital costs, depreciation, O&M [expense] and return on [the utility's investment in AMI," its argument actually goes to the previously-decided issue of capital investment. See, ABATE's reply brief, pp. 8-10.

[21] It should be noted that although one of the Attorney General's witnesses, Mr. Coppola, also recommended disallowing $9.9 million in O&M expense related to major outages, his recommendation in that regard appears--in the eyes of the ALJ--to have been based on the misinterpretation of a discovery response dealing solely with outages lasting at least 5 weeks, and his subsequent application of that information to the utility's forecast of all planned outages, regardless of their expected duration. See, Exhibit A-28, Schedule PF-1. Even if that is not the case, the ALJ finds that, because the $42 million expense level predicted by the Company is supported by Detroit Edison's expenditures over the last 5 years, the Commission should reject the Attorney General's proposed adjustment. See, 6 Tr 474-475; Exhibit A-28, Schedule PF-2.

been reasonable and prudent in incurring SNF costs as a whole, and that therefore none of its projected costs related to the Department of Energy's (DOE) breach of its SNF storage contract--specifically, those arising from the Company's need to use dry cask storage--should be recovered from ratepayers, (3) establishing a trust fund to related to the long-term storage of SNF, and (4) initiating a contested case proceeding to determine how any monetary recovery arising from its ongoing litigation against the DOE should be dispersed.

The ALJ finds that none of these requests is adequately supported by the record. For example, the suggestion by Attorney General witness Coppola to essentially reduce the Company's projected spending with regard to the Monroe Plant ignores the fact that Detroit Edison now has 46 full-time workers at that site attending to tasks that were "not required before the new environmental control equipment was installed," and that a large share of the incremental O&M expense for that facility is related to recently required "environmental monitoring and air permit implementation and compliance." Detroit Edison's initial brief, p. 48 (citing 6 Tr 460 and 473-474).

As for basic costs relating to the operation of Fermi 2, the record reflects that the plant's O&M costs are influenced more by the national commercial nuclear energy market and regulatory forces than by either the local market or State law. Specifically, (1) the Nuclear Regulatory Commission [NRC] recently notified plant operators that its hourly inspection fees will increase by 5.4% in 2011, (2) Institute of Nuclear Power Operations dues are going to rise by 4.7% this year, and (3) the facility's refueling service costs are going up by at least $1 million per refuel outage, which represents an annual inflationary increase of approximately 15%. See, Id., 48. Turning to the matter of projected NEI fees, testimony indicates that NEI has coordinated the various nuclear plant owners' efforts to get the DOE to accept responsibility for its failure--at lest thus far--to take possession of SNF. See, 9 Tr 1610-1611. Concerning the cost of nuclear fuel itself, testimony provided by the utility's witness on this topic reflects that "Fermi 2's nuclear fuel costs [have] consistently approached top quartile performance as compared to its peers from 2005 through 2010," thus demonstrating a "commitment to cost control." Detroit Edison's reply brief, p. 35.

Finally, we turn to MCAAA's assertions that all expenses arising from the DOE's breach of its SNF acceptance agreement with Detroit Edison should be collected from the DOE (as opposed to ratepayers), and that the utility has not been reasonable and prudent in incurring its SNF costs in the first place. The Company has taken numerous legal steps to enforce its contract with the DOE. However, until the DOE is forced to fulfill its obligation and finally take actual possession of the SNF arising from Fermi 2, the company is left to its own devices regarding how to safely store and monitor this growing amount of radioactive waste. In this regard, the ALJ agrees with the Company that it has "taken a conservative and graduated approach" in managing its on-site spent fuel storage, with "incremental investments based on the best available information regarding when the DOE would begin accepting SNF." Id., p. 54.

Moreover, despite repeated arguments offered by MCAAA (and MEC/PIRGIM before it), the Commission has consistently recognized that the matter of long-term SNF disposal is a national problem, and that utilities like Detroit Edison must comply with federal law and regulations in that regard. For example, in Case No. U-12613, where MEC/PIRGIM (1) challenged Wisconsin Public Service Corporation's (WPS Corp's) recovery of SNF fees paid to the Nuclear Waste Fund, and (2) suggested requiring the utility to make equal payments into an escrow account, thus creating a contingent funding source for SNF disposal should the DOE default on its obligations, the Commission held that:

> MEC/PIRGIM's proposals are not necessary to correct any showing of an unreasonable or imprudent action or omission on the part of WPS Corp's management that adversely affects the rates paid by PSCR customers. The problem is larger than WPS Corp's nuclear operation, feasible alternatives to the DOE's construction of a permanent repositiory are not readily apparent, and the Commission is unable to find that WPS Corp has been imprudent.

November 20, 2001 order in Case No. U-12613, pp. 8-9.[22] The Commission went on to follow that holding in Case No. U-13808, a Detroit Edison rate case in which it pointed out that it had repeatedly rejected identical arguments by MEC/PIRGIM in prior proceedings. See, November 23, 2004 order in Case No. U-13808, p. 120.[23] In the Company's next rate case, the Commission found that MEC/PIRGIM's proposals differed little from those raised and rejected in past cases, and then proceeded to discuss its rejection of each of those SNF-related arguments in Cases Nos. U-12613, U-12615, and U-13917. December 23, 2008 order in Case No. U-15244, pp. 60-61.

Furthermore, MCAAA's recommendation that Detroit Edison withhold all nuclear waste fees paid under its Standard Contract with the DOE (and instead place them in a trust fund) could result in the utility itself being found in default of that contract, and thus in violation of Section 302(b) of the Nuclear Waste Policy Act, which effectively requires

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[22] The Court of Appeals affirmed the decision and the Supreme Court declined to review the matter. See, Michigan Environmental Council v Public Service Comm, unpublished opinion per curiam, decided December 9, 2003 (Docket Nos. 240403 and 240406), *lv. den* 471 Mich 870 (2004).

[23] Affirmed by the Court of Appeals, In re Application of Detroit Edison Co, 276 Mich App 216 (2007), *lv den* [at least as to SNF-related issues] September 19, 2008 (Docket No. 134674) *lv den* January 12, 2009 by the United States Supreme Court (Docket No. 08-573).

all holders of nuclear power plant operating licenses to have such a contract with the DOE. Because doing so would clearly jeopardize the Company's ability to operate Fermi 2, and likewise undercut Detroit Edison's existing lawsuits for damages against the DOE, the ALJ recommends rejecting that proposal. Similarly, the ALJ disagrees with MCAAA's suggestion (again, previously offered by MEC/PIRGIM) that the utility should simply pay the DOE its requisite fees, while simultaneously placing an equal amount in a trust fund. Because taking such action would serve to double the cost incurred by Detroit Edison and charged to its customers, it would not be in the best interests of either the utility or its ratepayers. Furthermore, because the long-term storage of SNF is a country-wide issue (both from an environmental and a national security standpoint), the government has great incentive--in addition to its previously-noted legal obligation--to eventually accept SNF for permanent disposal. As a result, the Company has been reasonable in its assumption that the DOE (or some other federal agency) will ultimately accept Fermi 2's SNF for long-term storage. Finally, any suggestion by MCAAA to the effect that Detroit Edison be required to initiate a contested case to determine how any monetary recovery from its litigation against the DOE should be dispersed is, as correctly noted by the utility, both premature and speculative.

For the reasons stated above, the ALJ recommends that the Commission reject the various proposals offered by the Attorney General and MCAAA, and instead adopt the utility's position regarding its recovery of O&M costs arising from fossil,[24] hydraulic, and nuclear power generation.

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[24] This obviously includes all O&M expense arising from the operation of Detroit Edison's alleged "marginal" plants, whose continued operation (at least during the test year) was recommended earlier.

5. Nuclear Decommissioning Surcharge and Report

Two related issues have arisen in this proceeding, both of which involve the issue of nuclear decommissioning. One concerns the level of annual contribution (acquired by way of a Commission-approved surcharge) to be made to the end-of-life decommissioning trust fund previously established for Fermi 2, while the other relates to the development and issuance of Detroit Edison's 3-year cyclical decommissioning trust fund adequacy report.

With regard to the first of these issues, the utility expressed its intent to "pursue an operating license extension that would allow Fermi 2 to operate an additional 20 years beyond its current operating license, which expires in 2025." Detroit Edison's reply brief, p. 106. Due to that potential license extension, which would provide a longer time to accumulate the funds necessary to decommission the plant, the Company suggested adjusting its decommissioning fund surcharge to reduce its annual recovery from $33 million per year to $13.5 million annually. See, Id. In arriving at the new, lower figure, the utility used an estimated $1.8 billion in total Fermi 2 decommissioning costs (stated in 2009 dollars), the previously-approved 6% escalation rate, a 7% after-tax earnings rate on the fund itself, and an assumed 35-year remaining life. See, 8 Tr 1362-1363; 9 Tr 1601-1603; Exhibit A-19, Schedule K1.

Following Staff witness Megginson's review of the Company's decommissioning fund balance, as well as the future cost estimates and investments discussed in Detroit Edison's January 30, 2009 report (which set forth trust fund data through the close of 2008), the Staff "determined that the [proposed] nuclear decommissioning surcharge reduction appears reasonable." Staff's initial brief, p. 49. Kroger similarly supports the utility's proposed reduction in this surcharge. Kroger's initial brief, p. 6. In contrast, ABATE's witness with regard to this issue, Mr. Selecky, suggested reducing the assumed cost escalation rate for payments to the fund from the 6.0% level proposed in Detroit Edison's filing to 5.0%. See, 9 Tr 1471. This suggestion was based on the fact that, even at 5%, the proposed escalation rate would be more than double the current and forecasted CPI projections of 2.4%. For its part, MCAAA went so far as to recommend suspending the surcharge in its entirety, thus eliminating all funding for the trust. See, MCAAA's initial brief, p. 52.

On this issue, the ALJ finds that insufficient evidence has been offered in this case to find that Detroit Edison's decommissioning trust fund balance is presently too high. Thus, he recommends rejecting MCAAA's proposal to suspend the surcharge at this time. As for ABATE's suggestion to replace the previously-approved 6% escalation rate with the 5% rate recommended by Mr. Selecky, the ALJ again finds it best to err on the side of caution. It is therefore recommended that, at least until the escalation factor can be carefully reviewed in the context of the Company's next decommissioning trust fund adequacy report (currently due in January of 2012), the Commission should adopt the 6% escalation factor for use in computing the appropriate trust fund surcharge.

The second issue to address concerns the creation and issuance of the report itself. As alluded to above, Detroit Edison is currently required to prepare and issue a trust fund adequacy report every three years, with the next one due in January 2012. The utility proposes to delay issuance of that report until April 2015. This proposal is based on the grounds that "since a final order in this case addressing Fermi 2 decommissioning funding" will be issued in late 2011, it would be "meaningless for [the

Company] to file another report approximately two months later." Detroit Edison's initial brief, p. 59. The Staff opposes this request, asserting that it is important for the Company to "maintain its well-established 3-year reporting cycle to ensure a continuous record of decommissioning adequacy reports for the Fermi 2 nuclear plant." Staff's initial brief, p. 49. MCAAA goes further yet, suggesting that the trust fund report be set for contested case hearings. <u>See</u>, MCAAA's initial brief, p. 53.

The ALJ agrees with the Staff, and finds that the opposing proposals offered by the utility and MCAAA should be rejected in this case. As correctly noted by the Staff, continued adherence to the 3-year reporting requirement "is especially important given the recent events . . . in Japan [that may justify] increased scrutiny and safety protocols" at nuclear plants like Fermi 2, and which would likely increase the reasonable amount to be included in each facility's decommissioning fund. Staff's initial brief, p. 50 (citing 11 Tr 2155). Adhering to the Commission-approved schedule and having Detroit Edison submit its decommissioning fund adequacy report as scheduled in January of 2012 (a report whose production will likely address all related issues in more detail and with more recent data than provided in this proceeding) seems--at least to this ALJ's way of thinking--to be the most responsible course of action. On the other hand, MCAAA failed to show why there would be any particular benefit to conducting a contested case on those issues, particularly when such a proceeding would certainly delay--possibly by a year or more--the ultimate issuance of a full report regarding whether or not the level of the Company's decommissioning trust fund was adequate to cover the expenses that will ultimately be incurred. For these reasons, it is recommended that the Commission reject the reporting-related proposals offered by

Detroit Edison and MCAAA, and simply require the utility to continue adhering to the 3-year reporting schedule under which it has been functioning.

6. Miscellaneous Fuel Supply and A&G Expenses

The Attorney General proposes that Detroit Edison's projected expenses related to customer service and marketing activities, corporate services, MERC costs, and the Nuclear Electric Insurance Limited (NEIL) company refund be reduced by about $3.3 million, $7.9 million, $2.8 million,[25] and $500,000, respectively. See, Attorney General's initial brief, pp. 34-35, and reply brief, pp. 12-13. Nevertheless, the sole argument set forth in his briefs in support of those particular reductions is that, in light of "the historical rate increases . . . granted [to Detroit Edison] in Cases Nos. U-13808, U-15244, and U-15768, as well as the economic recession that currently exists in Michigan," the Commission should limit the total rate increase provided to the utility in the present proceeding by adopting those reductions. See, Attorney General's reply brief, p. 13; See also, Attorney General's initial brief, p. 35. The Staff, on the other hand, specifically adopted the MERC-related O&M expense level proposed by the Company, and expressed no objection to the others. See, Staff's initial brief, p. 46.

The ALJ finds insufficient grounds for making the reductions the Attorney General seeks with regard to these various expense items. Most of the miscellaneous reductions suggested by the Attorney General's witness, Mr. Coppola, are based on his opposition to Detroit Edison's decision to include inflationary increases in its cost projections. However, such concerns were previously rejected in the portion of this PFD

[25] Although Mr. Coppola testified in favor of a $2.8 million reduction with regard to MERC (See, 10 Tr 1773), this figure was mistakenly listed as $28 million in the Attorney General's filings. See, Attorney General's initial brief, p. 35; reply brief, p. 12.

dealing with inflation. Moreover, on the two issues where he goes beyond the matter of inflation, namely when he objects to the inclusion of MERC costs equal to the 2009 actual expenditure level (based on a drop in this cost during 2010), and contends that his estimate of the NEIL refund is better (because it reflects the average of those received from 2007 to 2009), past Commission orders and the record assembled in this case conflict with his position.

With regard to the MERC, the Commission has consistently adopted the utility's accounting treatment regarding MERC costs. See, the Commission's September 17, 1976 order in U-5041, its May 27, 1977 order in Case No. U-5108, and its December 8, 1987 order in Case No. U-8578. This is due to the fact that, as noted by Ms. Uzenski:

> [T]he starting point for [Mr. Coppola's] analysis was incorrect because there must be an offset to MERC O&M so that MERC's net income is reduced to zero. MERC returns its profits to [the utility's] customers in the PSCR process. If the O&M offset were not included in the base rate net operating income calculation, then MERC's profits would inappropriately be credited to customers twice.

See, Detroit Edison's reply brief, pp. 56-57 (citing 7 Tr 1134-1136). Turning to the issue of what level of assumed NEIL refund is the most reasonable projection for the test year ending March 31, 2012, the ALJ is persuaded by the utility's argument that the average 2007-2009 refund advocated by the Attorney General "is less predictive of future refunds than [the Company's] use of the 2009 historical amount, adjusted for inflation." Detroit Edison's reply brief, p. 58 (citing 7 Tr 1136). Finally, and notwithstanding the Attorney General's assertions to the contrary, the fact that the utility has received rate increases in the past and that the economy is weak at the present time, is not adequate justification for denying the Company a reasonable rate of return by artificially suppressing the likely level of expenses it will incur during the plan year. The ALJ therefore recommends that the Commission reject the Attorney General's proposed changes to the above-mentioned fuel supply and A&G expenses.

7. Low Income Energy Efficiency Fund (LIEEF) Expense

LIEEF is a program, initially established by The Customer Choice and Electric Reliability Act, 2000 PA 141, MCL 460.10 et seq., under which utilities like Detroit Edison established a fund (paid for through base rates) designed to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customer classes. As noted in prior Commission orders, while the program provides direct financial benefits to low-income customers, the Company's other customers receive at least three indirect (but nonetheless sizeable) benefits from the program's operation. First, spending on LIEEF-related activities reduces load growth, thus postponing the construction of additional (and capital intensive) generating facilities, whose costs of construction and operation would ultimately be borne by those customers. Second, energy efficiency programs paid for by the fund help reduce those customers' energy usage, thereby lowering their bills. Third, increasing the energy efficiency of low-income households has proven to also reduce the utility's uncollectible account expense, thus lowering the Company's revenue requirement and, ultimately, its overall rates.

In the present case, David W. Broome, DTE's Director of Customer Marketing and Community Lighting, offered the utility's position regarding its projected level of LIEEF expense for the test year. Specifically, Mr. Broome noted that LIEEF-related spending during the historical test period was $39,858,000 (as reflected in Account 908), that he "[did] not anticipate any change in this expense level," and "therefore [has] not made any adjustments for the projected test period." 8 Tr 1332. According to the Staff, it "reviewed and analyzed the Company's proposed LIEEF expense," agreed with Detroit Edison's suggested cost level, and therefore "adopted the Company's calculation into Staff's O&M expense calculation for the 12-months ending March 31, 2012." Staff's initial brief, p. 46 (citing Exhibit S-3, Schedule C-5, line 3).

The only other parties to address this matter were the Attorney General and ABATE, who both asserted, as they have unsuccessfully in prior cases involving Detroit Edison and others, that the Commission lacks statutory authority to approve a utility's request to recover of this type of low-income customer subsidization expense in its rates. See, Attorney General's reply brief, p. 20; ABATE's Supplemental Authority, p. 1. Although recognizing that the Court of Appeals had rejected arguments to that effect in the past, these two intervenors went on to assert that amendments arising from Act 286 may have served to eliminate the statutory basis supporting the Court's prior assessment of this issue. See, i.e., Attorney General's reply brief, pp. 20-22.

On July 21, 2011, and thus subsequent to the close of the record and the submission of both briefs and reply briefs in this case, the Court of Appeals issued a for-publication order in In Re Application of Michigan Consolidated Gas Company to Increase Rates, Docket Nos. 298830 and 298887, in which it concluded as follows with regard to LIEEF:

> For these reasons, we hold that administration of a LIEEF does not fall within the scope of the PSC's general statutory powers, but depends in every instance on specific statutory authorization. For these reasons, we reverse the PSC's order below insofar that it approved more than $5 million in LIEEF funding to come from Mich Con's ratepayers. . . .

Slip opinion in Docket Nos. 298830 and 298887, p. 6.

Unfortunately for all involved, the timing of that decision has created a bit of a conundrum for the Commission. Specifically, Michigan Court Rule (MCR) 7.215(F) states, in pertinent part that:

> (a) the Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court.

MCR 7.215(F)(a). Moreover, MCR 7.302(C)(1) provides that such an application must be filed within 42 days following the issuance of the underlying decision (a deadline that, by itself, extends beyond the date set for issuance of this PFD, as well as the date established for the filing of exceptions in this case. Thus, at this point--and into the foreseeable future--it is impossible to tell whether (1) the July 21, 2011 ruling will be challenged by one or more of the parties, (2) what the effect of any such challenge would have on timing with regard to the ultimate enforcement, if any, of the Court of Appeals' decision, (3) whether the Supreme Court would take up any appeal regarding this issue and, if so, what the ultimate outcome would be, and (4) whether the Legislature will take any action with regard to LIEEF in the interim.

The problem this creates is that, should the Commission elect to simply remove all LIEEF funding from the rates established in the present proceeding, substantial harm could result that would be extremely difficult, if not impossible, to rectify should either the Supreme Court or the Legislature take steps to continue the program. As a result, the ALJ concludes that a cautious approach is needed with regard to this issue. Therefore, because the record assembled in this case strongly supports including LIEEF costs in Detroit Edison's rates, the ALJ finds that the best course of action would be for the Commission to provide for their recovery--at the requested level of $39.9

million annually--but have those funds placed in escrow until the legal issue is finally resolved. At that point, and depending on the issue's outcome, the segregated funds would either be passed on to the state for continued LIEEF operations or refunded to the utility's customers.

For these reasons, the ALJ recommends that the Commission approve Detroit Edison's request to include, in the computation of its NOI, $39.9 million of LIEEF-related expenses.

8. Uncollectible Accounts Expense

A utility's uncollectible account expense (generally referred to simply as its uncollectible expense) represents the expense that is recorded in the Company's income statement to reflect the portion of current sales revenue that is not expected to be collectible. Both the Generally Accepted Accounting Principles and the Commission's Uniform System of Accounts (USOA) require that Detroit Edison currently recognize the portion of each year's revenues that will not be collected. In the present case, Mr. Broome offered the utility's position on this matter.

According to Mr. Broome, increases in Detroit Edison's uncollectible expenses result from "higher energy commodity costs as well as the continued economic downturn in Michigan," which, in turn, is largely driven by "high unemployment rates, increasing levels of foreclosures, and rising poverty" in the utility's service territory. Detroit Edison's initial brief, p. 77 (citing 8 Tr 1325-1326). He went on to state that the utility is "working aggressively to reduce uncollectible expense and arrears, and succeeded in reducing the Company's uncollectible expense from $87 million in 2008 to $77.8 million in 2009." Id., (citing 8 Tr 1325-1327). Moreover, he continued, Detroit

Edison hopes to reduce its uncollectible expense for the projected test year by another $5 million from the 2009 actual test year level. See, 8 Tr 1327. Based on this testimony, Detroit Edison requests adoption of an uncollectible expense level of $72.9 million for use in this case. Detroit Edison's initial brief, pp. 77-78. Furthermore, the utility proposes that "if the Commission adopts [the utility's] recommended level of uncollectible expense of $72.9 million for the projected test year, then its UETM should be suspended." Id., p. 100 (citations omitted).

The Staff originally suggested establishing the Company's projected test year uncollectible expense level at $55,889,143, which it pointed out represents the utility's actual 2010 uncollectible expense booked to Account 924, less charitable donations in the amount of $2,065,493. According to the Staff, the "very same aggressive actions" employed by Detroit Edison to greatly reduce uncollectibles in 2008 and 2009, "reduced uncollectible accounts expense by another $19.9 million, to $57.9 million for 2010." Staff's reply brief, p. 22. Essentially arguing that the 2010 expense level it relied on was both an actual number and the most current cost figure available, the Staff expressed concern that the utility's proposed figure could be "subject to material overstatement." Id. Nevertheless, the Staff went on to note that its initial position was based on the mistaken belief that "the Company's low income matching program was a charity, when in fact it's a company program to reduce uncollectible expense," and that the above-mentioned $2,065,493 was removed in error. Id. As a result, the Staff now asserts that the most reasonable level of uncollectible expense to adopt would be $57,954,636.

The only other party to address this issue was the Attorney General, whose witness essentially asserted that "the Company's proposal to recover $72.9 million for uncollectible account expenses" without including an adjustment mechanism to protect customers should that figure be overstated, is excessive "in light of stabilizing economic conditions" and in light of discovery responses showing that Detroit Edison is forecasting continued declines in uncollectible expense levels. Attorney General's initial brief, p. 35 (citing 10 Tr 1781-1784; Exhibit AG-14). Thus, based on Mr. Coppola's estimate of uncollectible expense, the Attorney General initially recommended adopting $63.7 million for this component of the utility's total operating expense. Id., p. 35 (citing 10 Tr 1782). However, he subsequently altered his position, and now supports the Staff's updated figure of $57,954,636. Attorney General's reply brief, p. 13.

The ALJ finds that the Staff's projection of test year uncollectible expense (in which the Attorney General now joins) is likely to prove more accurate than the level suggested by Detroit Edison. As noted by the Attorney General, the utility itself actually projects uncollectable expense levels for both 2011 and 2012 to decline even further than the level reached during 2010. See, Exhibit A-14. The ALJ therefore recommends that the Commission adopt the Staff's projected level of test year uncollectible expense, namely $57,954,636, for use in this case.

9. Employee Pension and OPEB Expense

As reflected on Exhibit A-10, Schedule C5.9, Detroit Edison's initial filing in this matter projected that its total test year employee pension and OPEB expense[26] would be $345.12 million, which constituted a $98.2 million increase from the level incurred in its 2009 historical test year. However, through its review of the utility's December 17, 2010 actuarial report (which "used a more current discount rate and return on asset

[26] As noted by the utility, OPEB costs are those expenses related to retiree medical, dental, prescription drug, and life insurance benefits. Detroit Edison's initial brief, p. 81.

assumption"), the Staff arrived at an expense figure that was $62,627,000 less than the amount requested by the Company. Staff's initial brief, p. 34 (citing 11 Tr 2267). Moreover, although his witness offered testimony proposing a total reduction of only $33.4 million, as reflected on Exhibit AG-15, the Attorney General ultimately elected to support the Staff's proposal instead. Attorney General's reply brief, p. 14.

In light of the Staff's testimony on this matter (and "for the purpose of reducing issues in dispute"), the utility now concludes that "the Staff's updated projections for pension and OPEB expense" should be adopted. Detroit Edison's initial brief, p. 78. Thus, based on the Staff's analysis of this issue, the evidentiary support provided by its witness, and the lack of opposition by any party, the ALJ recommends that the Commission adopt the adjusted (and normalized) figure of $282.3 million as the level of pension and OPEB expense to use in setting Detroit Edison's electric rates.

Nevertheless, it appears that a pair of related issues still need to be addressed, both of which were outlined by the Attorney General in his reply brief. One concerns the utility's request (set forth in its application in Case No. U-16489) for authority to defer and amortize the proposed increase in pension and OPEB expenses addressed above. The other involved a concern, expressed by Attorney General witness Coppola, that "the Company's payments into its OPEB trust funds from 2005 through 2010 totaled $348.6 million less than the income [Detroit Edison] received from ratepayers during the same period for recovery of OPEB expenses." Attorney General's reply brief, p. 16.

As for the first of these concerns, the Attorney General points out that, following consolidation of Case No. U-16489 with the rate case initiated in Case No. U-16472, the utility filed testimony from Don M. Stanczak that stated as follows regarding the effect that the deferral of incremental pension and OPEB expense would have on Detroit Edison's requested rate relief:

> [The Company] currently has approximately $191.9 million in base rates related to net pension and OPEB expense based on the final order in [its] last rate case, Case No. U-15768. Also, [its] projected net pension and OPEB expense for the projected test year in Case No. U-16427, assuming no deferral, is $250.3 million. Therefore, the incremental net pension and OPEB expense for the projected test year, reflected in the Rate Case, beyond the level reflected in [the utility's] current rates, is about $58.4 million. Note, these amounts are net, or after a portion of total pension and OPEB costs are capitalized and transferred. Assuming the Commission had authorized the deferral and five year amortization requested in this Accounting Case, as well as adopt Edison's $250.3 million pension and OPEB projection in the Rate Case, the amortization in the projected test year would be approximately $11.7 million, one fifth of the total deferral, resulting in a net reduction in the required rate relief of $46.7 million.

8 Tr 1412-1413 (citations omitted). The Staff contends that this proposed deferral is neither required nor needed because, as discussed by its witness, Mr. Welke, "the most current actuarial report forecasted pension and OPEB expenses that are below the amount currently in base rates," thus meaning that there is actually no expense to be deferred at this time. Staff's initial brief, p. 35 (citing 11 Tr 2268). The Attorney General agrees with that assessment, but goes on to say that, if there actually were some level of expense available for deferral, he would oppose it on the grounds that it "would simply shift rate increases forward to future ratepayers with the addition of interest and resulting surcharges." Attorney General's reply brief, p. 15. Similarly, Kroger opposes the requested deferral of OPEB costs on the grounds that it does not represent any actual reduction in costs, but rather serves only to "delay cost recovery now for recovery in the future," thus distorting the "cost responsibility" that should be assigned to the utility's customers. Kroger initial brief, pp. 6-7. Finally, although being generally

supportive of the deferral concept, DEAR asserts that Commission approval of such a structure include "adequate safeguards and protections to assure the security of the funds . . . in the event that adverse financial difficulties or other circumstances develop" during the amortization period.[27] DEAR's initial brief, p. 2.

The ALJ agrees with the Staff, the Attorney General, and Kroger with regard to this issue. Clearly, if the most recent (and apparently unchallenged) actuarial data indicates that projected pension and OPEB costs are lower than the amount included in Detroit Edison's existing rates, there is no justification for taking steps that would--as asserted by the Attorney General--potentially shift rate increases forward to the utility's future ratepayers, who would then also be called upon to reimburse the Company for all interest accrued in the interim. The ALJ thus finds that the relief sought by Detroit Edison in Case No. U-16489 (specifically, authority to defer and amortize the proposed increase in pension and OPEB expenses arising from this proceeding), is not supported by the record. It is therefore recommended that the Commission refrain from granting the relief sought in that case, and instead reject all requests to defer recovery of any incremental pension and OPEB expense.

Turning to the second concern expressed by the Attorney General (namely, his assertion that the Company's payments into its OPEB trust funds from 2005 to 2010 were apparently $348.6 million less than the amount paid by ratepayers for recovery of the utility's related expenses), Mr. Coppola asserted that although Detroit Edison's

[27] Specifically, DEAR's witness, Robert L. Tompkins, testified that a major business merger, consolidation, takeover, divestiture, or bankruptcy could have an adverse effect on Detroit Edison's ability to meet its pension and OPEB funding obligations, both now and in the future. See, 8 Tr. 1253-1255. As a result, he suggested conditioning any deferral on the requirement that the utility (or its successor entity, one would assume) would be required to restore all deferred funds should any such structural change occur. See, Id.

OPEB plan obligations totaled $1.7 billion at the close of 2010, its plan assets totaled only $682 million. See, 10 Tr 1790. Due to this alleged discrepancy, the Attorney General continues, Mr. Coppola reviewed the utility's Form 10-K filings for 2005 through 2010, and concluded that the utility had significantly underfunded its OPEB plan during that period. See, Attorney General's reply brief, p. 16. In light of this presumed shortfall, Mr. Coppola suggested reducing Detroit Edison's projected test year OPEB expense to impute a proper level of past contributions to match the OPEB liabilities the Company has been recovering from its ratepayers. The Attorney General therefore contends that, at a minimum, the Commission should reduce the utility's recovery of OPEB-related costs "by $20 million for O&M expenses and by $7 million for capital expenditures." See, Attorney General's initial brief, p. 37.

Although agreeing with the Attorney General that Detroit Edison has not fully funded its external trust, the Staff disagrees with his proposed remedy for two reasons. First, the Staff contends that the Attorney General's recommended reduction to O&M expense "ignores the corresponding impact on working capital, which would nearly negate the O&M adjustment's impact on [the utility's] revenue requirement. Staff's initial brief, pp. 36-39, and reply brief, p. 25. Second, the Staff contends that it is preferable to address OPEB funding on a prospective basis, rather than relying on prior funding shortfalls. See, Id.

For its part, Detroit Edison contends that the Attorney General's proposal must be rejected for two reasons. First, the utility asserts that the analysis prepared by the Attorney General's witness and set forth on Exhibit AG-18/Revised is fundamentally flawed. In support of this contention, the Company asserts that (1) Mr. Coppola's reliance on the Company's annual 10-K filings, which only include OPEB-related data through November 30, led him to ignore any payments to the OPEB trusts made in December of any given year and thus resulted in him significantly understating the amounts actually placed in those trusts, and (2) his failure to account for the effects of any OPEB costs that were securitized and capitalized further understated the utility's contributions. See, Detroit Edison's reply brief, pp. 64-68 (citing 7 Tr 854-855). Second (and as previously noted by the Staff), the Attorney General's proposal "ignores the offsetting impact of any increased OPEB funding on the Company's working capital requirement." Id., p. 69.

The ALJ agrees with the Staff and Detroit Edison that the Attorney General's proposed reduction in OPEB expense should be rejected. The record reflects that the level of disparity between what Detroit Edison was required to place in its OPEB trust funds and what it actually contributed between 2005 and 2010 was greatly overstated by the Attorney General's witness. A comparison of Exhibits A-35 and AG-18/Revised shows that, apparently by failing to account for the December contributions made by the utility, Mr. Coppola understated the utility's actual contributions during that period. This problem was then exacerbated, it appears, by his failure to account for the significant amount of OPEB costs that were securitized and capitalized over the years. See, 7 Tr 853-856. Moreover, and as noted by both Detroit Edison and the Staff, the Attorney General's request to effectively reduce test year OPEB costs by $27 million ignores the offsetting impact of any increased OPEB funding on the utility's working capital requirement. See, Id. As pointed out in rebuttal testimony submitted by Detroit Edison's witness on this issue, Jeffrey C. Wuepper, "any increased funding of its OPEB liabilities would increase the Company's working capital requirements since the increased funding would lower [its] accrued OPEB liability." Detroit Edison's reply brief, pp. 69-70 (citing 7 Tr 855-856).

Nevertheless, although the disparity between the utility's OPEB liability and its historical payments is much smaller than suggested by the Attorney General, it does appear that (as noted by the Staff) Detroit Edison has not fully funded the external OPEB trust. To prevent a recurrence and to make it easier to monitor this situation on a going-forward basis, the ALJ finds that the Staff's request to "direct the Company to fund the entire portion of OPEB expense and not an amount net of capitalization" should be adopted. Staff's initial brief, p. 8. For all of the reasons discussed above, the ALJ recommends that the Commission reject the Attorney General's proposal to essentially begin recouping any OPEB underpayments and, instead, adopt the Staff's request to direct Detroit Edison to immediately begin funding the entire OPEB expense as opposed to an amount that is net of capitalization.

10. Active Employee Health Care Benefits

Detroit Edison projects that the cost of providing non-wage benefits to its active employees will increase from $102.5 million in the historic period to $131.5 million in the projected test period. As reflected on Exhibit A-10, Schedule C5.9, the largest component of this category is the cost of its medical, dental, and vision health care benefits, which are projected (vial application of an 8% inflation factor) to rise by approximately $13.5 million over the same time frame. See, 7 Tr 828, 849. The utility goes on to state that it has taken "dramatic actions to manage benefit costs for its active employees and retirees, and plans to continue its aggressive efforts to manage benefit costs" in the future. Detroit Edison's initial brief, p. 82 (citing 7 Tr 829-832 and 848-849).

In response, the Staff recommends reducing the utility's projected test year active health care benefit expense by $8,110,000, taking it from $59,880,000 to $48,094,000. See, Staff's initial brief, p. 39 (citing 11 Tr 2268). It computed this lower expense figure by starting with the Company's "actual 2010 costs and then escalating them by 8% per annum through the end of the projected test year. Id. According to the Staff, it elected to use the actual 2010 expense level as a starting point (as opposed to the 2009 actual cost level relied upon by Detroit Edison) on the grounds that it provided a more current and accurate representation of the utility's health care expenses. The only other party to weigh in on this issue was the Attorney General, who (despite the fact that his witness proposed a larger cost reduction[28]) "agrees with the Staff's recommendations in this regard." Attorney General's reply brief, p. 26.

The ALJ agrees with the Staff and the Attorney General on this matter, and finds that Detroit Edison's projected test year active health care benefit expense should be reduced by $8,110,000. Notwithstanding the utility's assertions to the effect that the 2010 expense level relied upon by the Staff was "not representative" of its experience in recent years, and that its active health care costs are "subject to annual variability" (See, Detroit Edison's reply brief, p. 74), the fact remains that the Staff's analysis was based on "the actual and audited active health care expenses found in the MPSC P-521

[28] Specifically, Mr. Coppola suggested that the utility's projection of test year active employee health care benefits should be reduced by $11.8 million, based on the assumption that those employees should be required to contribute an additional 10% of the total active health care costs beginning with the projected test year in question. See, 10 Tr 1795. However, the practicality of that suggestion would seem to be highly questionable in light of the fact that the projected test year began several months ago and that a large number of the Company's employees are covered by collective bargaining agreements extending well into that period.

for 2010." Staff's reply brief, p. 24. Moreover, using actual data from 2010 as opposed to 2009 would, logically, have the advantage of capturing the utility's self-described "dramatic actions to manage benefit costs for its active employees" over the past few years. The ALJ thus recommends that the Commission adopt the Staff's proposal to reduce Detroit Edison's projected active employee health care expense level by $8.1 million, from $59,880,000 to $48,094,000.

11. Other Benefit Costs

By way of its application, Detroit Edison sought recovery of $41,678,000 in "other benefit costs" during the projected test year. While a majority of those benefits, as well as their attendant costs, are not currently in dispute, the Staff did request disallowing $7,255,000 of expense related to "non-qualified pensions, performance shares, and other perquisites offered to select and already highly compensated employees." Staff's initial brief, p. 42 (citing 11 Tr. 2268). According to the Staff, there is "no discernable difference between the perquisite expenses included in this case and those removed as neither just nor reasonable in numerous previous [rate] cases." Id. Apparently based on its own witnesses' statement that "I see no reason why the Commission should change its established policy and allow recovery of these costs" (11 Tr 1795-1796), the Attorney General agrees with the Staff's requested disallowance. Attorney General's reply brief, p. 26.

In response, the utility asserts that "some non-qualified pension plan costs are the result of Internal Revenue Service limitations on benefits earned by employees that are deemed highly compensated under the U.S. Tax Code." Detroit Edison's initial brief, p. 84. The Company goes on to contend that these particular costs are "purely a product of allowing certain members of management to reduce their tax costs by opting to postpone the receipt of a portion of their compensation." Id. As a result, the utility requests that all of its "other benefit costs" be included in the calculation of its NOI in this proceeding.

The ALJ disagrees with Detroit Edison, and finds that the $7,255,000 expense reduction proposed by the Staff, and supported by the Attorney General, be adopted. In reviewing this issue, it seems clear that the tax-related expenses noted by the utility are, as the Staff asserts, "non-qualified plan costs . . . attributable to the Company's supplemental executive retirement plan (SERP) and executive supplemental retirement plan (ESRP), which have been disallowed" by the Commission because their costs "are not commensurate with the benefits to ratepayers." Staff's reply brief, pp. 24-25 (citing the Commission's December 23, 2008 order in Case No. U-15244, p. 33). Because the utility's SERP and ESRP plans (along with their related costs) appear, upon close examination, to be substantively the same as those disallowed in previous Commission orders, the ALJ recommends that the Commission adopt the Staff's recommendation to remove $7,255,000 from Detroit Edison's projected other benefit costs for the April 1, 2011 to March 31, 2012 test year.

12. Employee Incentive Compensation Plan (EICP) Costs

Detroit Edison seeks rate recovery of $23 million in costs arising from the new "non-represented, non-executive EICP it implemented in 2011, and which replaces the compensation plan for which the Commission provided no rate recovery in the utility's two most recent rate cases.[29] According to the Company, its new program is more

[29] See, the December 23, 2008 order in Case No. U-15244, as well as the January 11 order.

"customer-focused" and has been designed to satisfy the Commission's previous concerns that "incentive plans need to more directly align the performance of [Detroit Edison's] employees with the factors that directly effect [its] customers, and that the benefits of the incentive plan must outweigh the incentive plan's costs." Detroit Edison's initial brief, pp. 84-85 (citations omitted). According to the utility, the record reflects that its newly-implemented EICP does precisely that. Specifically, the utility asserts that with regard to its witness on this particular issue:

> Mr. Brudzynski provided a detailed description of the design and mechanics of the new EICP, including the metrics used to track company performance, the method for setting Company performance level targets, and the conditions under which employees will receive incentive compensation payments. He described the nine metrics that are included in the plan, and explained that for each metric, a "base" performance level and a "target" performance level are determined.
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> * * *
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> Mr. Brudzynski also defined and quantified the benefits that [Detroit Edison] provides to its customers under its EICP. The customer benefits are defined as incremental benefits to the customer that are a result of employee performance in excess of base performance (Commission standards, industry average or company historical average) in the nine metrics, [and that] Mr. Brudzynski's cost/benefit analysis conservatively estimates that the EICP's benefits are approximately $124 million, which is more than five times the $23 million of EICP costs the [the utility] seeks to recover through rates.

Detroit Edison's initial brief, pp. 86-88.

The Staff takes a vastly different view of the record with regard to the structure of the utility's new EICP and the appropriateness of including its costs in base rates. According to testimony provided by Mr. Welke, the Commission's longstanding policy has been to "exclude all incentive compensation from the cost of providing service to ratepayers on the grounds that any purported ratepayer benefits are not commensurate with the cost of the program." 11 Tr 2269. Likewise, Mr. Welke continues, the Commission has repeatedly found that utilities must carefully quantify the benefits to ratepayers arising from any EICP structure that is "tied to non-financial metrics and demonstrate that the benefits to customers of such plans outweigh the costs." Id. Finally, he noted that the Commission has previously held that "incentive compensation plans that are tied to company earnings and cash flow, financial considerations that largely benefit shareholders, should not be paid for by ratepayers." Id. (citing the Commission's December 22, 2005 order in Case No. U-14347). Notwithstanding Detroit Edison's claims to the contrary, the Staff asserts that the requisite cost/benefit analysis was lacking in several ways and that the plan was not devoid of financial metrics. See, Staff's initial brief, pp. 40-41. As a result, it contends that the Commission should "continue its longstanding policy to not include EICP expenses within the Company's revenue requirement." Id.

The only other witness that addressed this particular issue, Attorney General witness Coppola, testified that while he applauds the Company's use of "a quantitative approach to show improved operating performance can result in financial benefits to customers," he "cannot support the assumptions and calculations" relied upon by Detroit Edison is performing its cost/benefit analysis. 10 Tr 1778. He therefore concluded that the $23 million cost recovery should not be authorized in this case, and that the utility should instead be instructed to "work with the Commission Staff to refine the calculation of benefits and arrive at a mutually acceptable approach before the next rate case filing by the Company." 10 Tr 1779. Based on that testimony, the Attorney General supports the Staff's request to deny recovery of Detroit Edison's EICP expenses. Attorney General's reply brief, pp. 12-13.

Although recognizing that Detroit Edison's new EICP comes closer than its predecessors to satisfying the longstanding requirements for cost recovery, the ALJ finds that problems still exist regarding both the program's structure and the evidentiary presentation provided in an effort to support adopting the utility's request.

First, although the utility contends that the EICP "does not include a single financial metric," that does not truly appear to be the case. Detroit Edison's initial brief, p. 85. According to its own witness on this matter, the program's payment to employees "can be adjusted based on the financial criteria achievement of the combination of Detroit Edison Net Operating Income, Detroit Edison Free Cash Flow, and DTE Energy Corporate Earnings per Share." 6 Tr 295.

Second, the record supports, at least in part, the Staff's assertion that the cost/benefit analysis provided by the utility "did not provide a comprehensive analysis demonstrating that the benefits of non-financial metrics included within the plan outweigh the costs." Staff's initial brief, p. 40; Staff's reply brief, p. 27. Specifically, a close review of Exhibit A-20, Schedule L3, shows that for the forth and fifth metrics (entitled "First Call Resolution for Simple bills, Complex bills, Outages, TDRs," and "Meter Read Rate," respectively), the estimated customer benefits are listed as "n/a." Similarly, the seventh metric, entitled "MPSC Complaints – DECo," reflects "$0.0" as the estimated benefits. Exhibit A-20, Schedule L3, line 7. While the inclusion of a benefit number in these three areas would arguably have increased the total customer benefits computed by the Company, their absence, when coupled with Mr. Coppola's concerns regarding the assumptions and calculations used to develop the cost/benefit analysis in the first place, militates against approving the requested cost recovery at this time. The ALJ therefore recommends that the Commission reject Detroit Edison's request for recovery of $23 million in EICP expenses in this case.

13. DTE Board of Director (BOD) Expense

In its filing, Detroit Edison proposed including, as part of its recoverable operating expenses, $1,941,000 of stock-based costs arising from its parent company's (i.e., DTE's) BOD activities. See, 11 Tr 2270-2271. According to its witness regarding this issue, Ms. Uzenski, because DTE's BOD essentially "performs the management, control, and oversight responsibilities" for [Detroit Edison], the costs the utility pays for those services should be recovered in base rates, and the fact that the payment for these services is stock-based in no way negates their necessity. Detroit Edison's initial brief, p. 90 (citing 7 Tr 1132).

The Staff disagrees with the utility's view, as well as its suggested treatment, of the expenses incurred by DTE's BOD. Essentially asserting that these expenses provide little actual benefit to the utility's customers, the Staff recommends that they be excluded in their entirety from the computation of Detroit Edison's NOI. The Staff therefore proposes reducing the Company's projected O&M expense by the entire $1,941,000 set forth in Detroit Edison's filling. Staff's initial brief, pp. 45-46. Once again, the Attorney General expresses support for the Staff's position. See, Attorney General's reply brief, p. 26.

The ALJ concludes that the Staff's proposed treatment of these costs is both reasonable and in keeping with past Commission practice. As correctly noted by Staff witness Welke, stock-based compensation is basically "a mechanism to enhance the financial performance of a company, which mainly benefits its shareholders, not ratepayers." 11 Tr 2271. Moreover, excluding these DTE BOD expenses is consistent with the ruling in Case No. U-15244, where--for much the same reason as expressed by Mr. Welke--the Commission held that:

> These expenses are used to encourage executives to promote the financial performance of Detroit Edison, which mainly benefits the company's shareholders, not its ratepayers. Therefore, Detroit Edison shall not recover from ratepayers any expenses for stock options, performance shares, restricted stocks and executive deferred compensation gains.

December 23, 2008 order in Case No. U-15244, p. 35. The ALJ thus recommends that the Commission exclude the full $1,941,000 of stock-based BOD expenses.

14. MGM Casino Parking Rental Cost

Prior to 2005, Detroit Edison owned land near its central office building that was used for employee parking. In 2005, that land was sold to the MGM Casino (MGM) for a $26.6 million gain, which the company "booked below-the-line." See, 11 Tr 2271. MGM subsequently built a parking structure on that land, and DTE signed a contract with MGM to use a portion of that facility for the employees of both Detroit Edison and its affiliate, Mich Con. At present, Detroit Edison has deferred its $13.3 million pre-tax gain on the sale of that land.

In its filing, Detroit Edison indicated that it expects to incur $1,062,000 in rental expense during the projected test year for use of MGM's parking structure (essentially, a cost that is billed to the utility by DTE). The Staff expresses concern regarding the fact that, while this rental expense is being shifted to the Company's ratepayers, Detroit

Edison's portion of the gain arising from the land's sale is being held below-the-line, as a benefit for its investors. As a result, the Staff "recommends [that] the $1,062,000 of rental expense associated with the [MGM/DTE parking lease] be treated as a below-the-line expense," as opposed to being assigned for recovery from ratepayers. Staff's initial brief, p. 45.

None of the parties has expressed objection to the Staff's proposal to remove these costs from the calculation of Detroit Edison's NOI and, instead, assign them to its recommended below-the-line status. Moreover, doing so would comport with the Commission's treatment of these costs in prior cases. See, i.e., the Commission's December 23, 2008 order in Case No. U-15244. As a result, the ALJ recommends that the Commission adopt the Staff's recommendation and remove the $1,062,000 of MGM parking rental expense from the calculation of Detroit Edison's NOI.

15. Fuel and Purchase Power Expense

As indicated by Kelly A. Holmes, a Principal Financial Analyst in DTE's Regulator affairs Division, Detroit Edison is not proposing to reset its PSCR base in the context of this case. "According to the utility, this is due to the fact that "the Commission recently approved base power supply costs in its December 28, 2008 Opinion and Order in Case No. U-15244," as well as the fact that those costs are reconciled annually via its PSCR proceedings. Detroit Edison's initial brief, p. 90. Moreover, the Company noted that, in the utility's most recent rate case, the Commission adopted its request to simply use that existing PSCR base of 33.39 mills per kilowatt-hour (KWh) and a PSCR factor of 0.00 mills per KWh when computing its power supply costs. Id. (citing the January 11 order, pp. 40-41). Additionally, Detroit Edison proposed reserving for the PSCR process all urea-related cost recovery.[30] Id., p. 91. Assuming acceptance of those parameters, Ms. Holmes proposed adoption of a total fuel and purchase power expense, including transmission, of $1,406,000,000. See, 6 Tr 269; Exhibit A-10, Schedule C-4.

The Staff recommended, based on testimony offered by Mr. Ancona, that Detroit Edison's figure be increased to $1,420,408,500 to reflect the effect that the utility's recently-signed wholesale for resale agreement with DPLD would have on its fuel and power purchase costs. The basis for this adjustment is reflected in Exhibit S-11.

The Attorney General supports the Staff's recommended adjustment[31] (See, Attorney General's reply brief, p. 25.), and none of the other parties appear to object to the use of this new, higher cost figure. As a result, the ALJ finds that the Staff's proposed figure of $1,420,408,500 is appropriate and recommends that the Commission adopt it for use in this proceeding.

16. Combined Operating License Application (COLA) Costs

On September 18, 2008, Detroit Edison filed a COLA application regarding the potential construction of an advanced nuclear generating plant. According to the utility, it has not made a final decision to build a new nuclear unit, but is reserving its option to

[30] Although one of the MCAAA's witnesses initially proposed requiring Detroit Edison to present a cost/benefit analysis regarding its urea program, it appears that MCAAA has now abandoned this issue, as noted by the utility. See, Detroit Edison's reply brief, p. 82.

[31] The Attorney General also noted, albeit in his reply brief, that although the utility proposes to continue using the same base PSCR rate allowance that was approved in the January 11 order, that figure "resulted in negative PSCR factors because revenues from the base rate allowance have exceeded actual PSCR expenses in recent PSCR cases." Attorney General's reply brief, p. 25. He therefore contends that Detroit Edison's PSCR allowance should be updated to match the projected level of expense adopted in this case. Because this proposal was not unveiled until the submission of the parties' reply briefs, the ALJ will not issue a recommendation on it. However, he would note that the parties may want to consider that proposition and, if they so desire, address it in the course of their exceptions and replies.

build it at some point in the future. See, 9 Tr 1599. Nevertheless, the NRC accepted that application for docketing, and the Company's request is now in the queue awaiting future review. As a result, Detroit Edison seeks to include projected test year COLA-related expenditures of $25.7 million in its working capital account, as has been done in its past two rate cases. See, the December 23, 2008 order in Case No. U-15244, p. 10; See also, the January 11 order, p. 16.

Attorney General witness Coppola claimed, at least initially, that Detroit Edison's decision to continue pursuing the COLA is not money well spent, and thus suggested an $8.3 million reduction in the utility's expected expenditures. See, 10 Tr 1908. However, it appears from a reading of his initial and reply briefs that the Attorney General has elected to abandon pursuit of that potential cost reduction. This, coupled with the fact that the Commission has consistently supported recovery of Detroit Edison's COLA costs in prior rate cases, leads the ALJ to find that inclusion of the projected costs is reasonable and to recommend that the Commission approve the utility's requested treatment of these expenditures.

17. Tax Expense and Tax-Related Accounting Issues

Detroit Edison calculated that, for the projected test year, it will incur federal income taxes (FIT) of $74.2 million, a Michigan Business Tax (MBT) of $27.6 million, municipal income taxes of approximately $500,000, and $262.3 million in property and other tax expense,[32] for a total of $354.6 million in total tax liability. See, Exhibit A-10, Schedules C1.1 and C9. The Staff, on the other hand, estimated--after making various updates and accepting two technical corrections to its calculation of the utility's likely

[32] As pointed out by the Staff, the "other tax" category consists of payroll, sales, and use taxes, as well as all assessment fees paid to the Commission. See, 11 Tr 2172

MBT--that the Company's total tax expense would be approximately $431.7 million, consisting of $137.4 million in FIT, $33.2 in MBT, municipal taxes of about $100,000, and $261 million in property and other taxes. Despite the difference between these parties' respective figures, it appears that the methods of calculating these various tax components are not in issue. Rather, the end result of the tax computations performed by Detroit Edison and the Staff vary solely due to other factors that are being addressed in this case (e.g., inflation factors, the ultimate level of NOI, depreciation costs, etc.). It thus makes little sense at this point to attempt to establish a final figure for any of these tax cost components. Rather, the ALJ concludes, that task should be left until after the Commission has ruled on all related issues in its final order.

However, two tax-related issues are ripe for determination at this time, namely the matter of how to treat what Kroger's witness, Neal Townsend, refers to as "bonus tax depreciation," and the utility's requested treatment of "uncertain tax positions (UPT)." See, Kroger's initial brief, p. 1; Detroit Edison's initial brief, p. 101.

With regard to the first of these issues, Mr. Townsend states that bonus tax depreciation refers to "a greatly accelerated tax deduction for depreciation that has been permitted pursuant to several statutes signed into law in recent years to stimulate the economy," and which generally provide for "a first year depreciation tax deduction equal to 50 percent of the cost of qualified property." Kroger's initial brief, pp. 1-2. According to Kroger, this increase in deferred income tax serves to (at least in the short term) reduce Detroit Edison's weighted cost of capital, and thus reduces the utility's overall revenue requirements. See, Id., p 2. However, Kroger goes on to note that, given the complexity involved in computing the specific effect bonus tax depreciation would have on the Company's projected test year revenue requirement calculation, it proposes requiring Detroit Edison to "recalculate its revenue requirement in a compliance filing, fully incorporating the effects of all bonus tax depreciation applicable to its plant in service through the end of the test period."[33] Id., p. 4. According to Kroger, this compliance filing "can be made subsequent to the Commission's determination of [the utility's] revenue requirement under the tax law assumptions used in the Company's filed case. Id.

As for the second issue, regarding the treatment of a UTP,[34] Detroit Edison seeks accounting authority from the Commission to do as follows:

> [R]ecord to Account 186 a Miscellaneous Deferred Debit for the accrued tax (on flow through items, i.e., federal permanent differences and state income tax reserves) and interest related to Uncertain Tax Positions ("UTPs") as of January 1, 2011, plus any additional interest and tax accrued subsequent to January 1, 2011, relating to UPTs. The Miscellaneous Deferred Debit would be trued-up to the actual tax and interest paid upon settlement of the UPTs with the taxing authority. [The utility] requests that the Commission authorize amortization of the Miscellaneous Deferred Debit to Account 407.3 "Regulatory Debit" over five years based upon the actual tax and interest paid resulting from the settlement. The recovery of the actual tax and interest paid would begin upon filing a rate case in a year subsequent to when a UPT is settled.

Detroit Edison's initial brief, p. 101 (citing 7 Tr 1002-1005). According to the utility, the problem created by its accumulation of UTPs over the years is that their "financial

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[33] Detroit Edison opposes this request on the grounds that, among other things, conducting such a post-order proceeding would effectively "require [Detroit Edison] to participate in a single issue rate case." Detroit Edison's reply brief, p. 83.

[34] The utility's witness on this issue, Mary Lewis, explained that, on July 13, 2006, the Financial Accounting Standards Board (FASB) issued FASB interpretation No. 48, which involved accounting for uncertainty in income taxes for years beginning after December 15, 2006. As described by Ms. Lewis, this interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with Financial Accounting Standard 109, and requires a determination of whether a tax position that is reflected in measuring current or deferred income tax assets and liabilities may not ultimately be sustained, in whole or part, by the taxing authority due to varied interpretations of the law and the application of that law to a particular factual situation. See, 7 Tr 999-1000.

statement costs . . . [result] in a significant shortfall" in the Company's overall revenue requirement because both the tax expense and its attendant interest expense "are not recoverable under current ratemaking." Id., p. 102. Thus, the utility contends, while ratepayers receive the benefit of the original tax deduction taken by Detroit Edison based on its tax planning, there is no way for it to recover the tax and interest expense should the UTP not be sustained following examination by the taxing authority. The Company therefore contends that its proposed treatment of UPTs should be approved by the Commission.

For its part, the Staff points out that these two tax issues "both involve similar changes to taxes payable in working capital and the deferred taxes in the capital structure." Staff's initial brief, p. 55. Thus, it concludes that Detroit Edison should treat both bonus tax depreciation and UTPs "similarly for ratemaking purposes." Id., p. 58. Moreover, the Staff notes that the Company's proposed accounting change effectively "shifts the risk of the UTPs from the Company's shareholder [i.e., DTE] to ratepayers without benefiting the ratepayers." Id., p. 54. As such, the Staff appears to recommend that both of these accounting requests should be rejected by the Commission.

The ALJ agrees with the Staff's analysis and, notwithstanding Detroit Edison's assertions to the contrary, finds that adopting the utility's proposal would, indeed, shift risk from the Company's sole shareholder--DTE--to Detroit Edison's customers. As noted by Daniel M. Birkam, an auditor in the Revenue Requirement's Section of the Commission's Regulated Energy Division, this would occur as follows:

> Staff is referring to the risk that shows up in the Company's cash-flows. The Company's cash-flows are improved by taking on these UTPs, as shown on Example 2 on page 24 of Company Witness Lewis's testimony. When the IRS overturns these UTPs, the Company's cash-flows are

> reduced by that amount. If this request is adopted by the Commission, the shareholders would be compensated by the ratepayers for the overturned UTPs. This shifts the risk of losing a UTP to the IRS from the shareholders to the ratepayers, without adding any ratepayer benefit.

11 Tr 2245. The ALJ therefore finds that the utility's requested treatment of its UTPs should be rejected. Furthermore, because the ALJ is also convinced that UTPs and bonus tax depreciation should be treated similarly for accounting purposes, he recommends that the Commission also reject the accounting treatment sought by Kroger with regard to bonus tax depreciation.

18. AFUDC Costs and "Other" Income

Detroit Edison requested, for use in setting its rates in this case, an amount for "AFUDC and Other" totaling $7.6 million. As reflected on Exhibit A-10, Schedule C11, this consists of $6.8 million of AFUDC-Equity, AFUDC-Debt of $4.7 million, and $1.6 million of other income, less commitment fee costs in the amount of $2.3 million, and less another $3.2 million in unamortized loss on reacquired debt.

The Staff takes issue with the utility's proposal for several reasons. First, it does not agree with the Company's election to include other income, commitment fees, or loss on retired debt in the calculation of AFUDC, as noted by Mr. Birkam. See, 11 Tr 2240. In addition, the Staff asserted that its own proposed overall rate of return--in the amount of 6.44%--should be applied to the calculation of AFUDC expense, instead of the 7.16% figure applied by Detroit Edison. See, Id. As a result, it contends that the Commission should reject the utility's figure and adopt the Staff's AFUDC cost estimate of $10.8 million, and that other income be removed from the calculation of NOI because it constitutes a below-the-line expense. See, Staff's initial brief, pp. 52-53.

Based on the testimony provided by Mr. Birkam, and the apparent lack of objection to the Staff's proposal by any other party, The ALJ recommends that the Commission adopt the Staff's proposed treatment of both AFUDC and other income.

19. Depreciation Expense, Intangible Plant Amortization, and Timing

As noted earlier, the utility and the Staff agree that, based on the Commission's recent order in Case No. U-16117 (Detroit Edison's depreciation rate case), the specific rates established in that proceeding are to be applied to the results of the present case in computing the actual rate levels charged to the Company's customers. Thus, as noted in the rather long footnote near the start of this PFD's discussion of rate base, the timing of that decision has left both the ALJ and the parties unable to set a precise cost level for the Company's test year depreciation expense. However, as noted at the close of that extensive footnote, the ALJ adopted the Staff's proposed depreciation rates for use here (subject to later adjustment) due to the fact that they appear to be closer to what the Commission ultimately approved in Case No. U-16117. The ALJ therefore recommends that the Commission adopt the Staff's proposed level of test year depreciation expense (at least on a tentative basis) when computing Detroit Edison's revenue deficiency.

Nevertheless, two depreciation-related issues are worthy of discussion at this point. The first involves the amortization rate for intangible plant, while the second concerns a request by Detroit Edison regarding timing of its various depreciation rates.

Regarding the first of these two issues, the Staff initially proposed applying an intangible plant amortization rate of 10%. As a basis for that recommendation, its witness (Mr. Birkam) stated that the Staff's suggested amortization rate was an estimate, and that it would accept a more accurately calculated rate based on actual amounts as they became known. Staff's initial brief, p. 50 (citing 11 Tr 2247). In the course of rebuttal testimony offered by Ms. Uzenski, Detroit Edison provided a more up-to-date figure of 12.1% for intangible plant. See, Id. (citing 7 Tr 1142). The Staff now asserts that, having analyzed that figure, it agrees to adopt the utility's suggested rate. No other party has objected to the use of that number.

As a result, based on the testimony offered on this issue by both Mr. Birkam and Ms. Uzenski, the ALJ finds the Company's suggested rate to be reasonable, and thus recommends that the Commission approve an intangible plant amortization rate of 12.1% for use in this case.

The second depreciation-related issue arises from the fact that, as noted earlier, the Commission's April 26, 2011 order in this proceeding authorized Detroit Edison to begin self-implementing its rate increase in the amount of $107 million annually. As a result of such self-implementation:

> Detroit Edison will need to provide the parties and the Commission with its calculations of (1) the total revenues collected through application of the self-implemented rate increase and (2) the total revenues that would have been produced by the rates and charges ordered by the Commission in its final order.

January 11 order, p. 72. The parties also recognized that the order setting new depreciation rates could be issued prior to the issuance of the final order in this general rate case. In light of that recognition, Detroit Edison witness Stanczak testified that:

> I propose that if the Commission issues an order [in Case No. U-16117] during the self-implementation period, that the Commission wait until it issues a final order in this case to make the new depreciation rates effective for accounting purposes. I further propose that under this scenario, the Commission establish two sets of rates. One set would be for the self-implementation period which would reflect the old depreciation

> rates and another set for the period after the final order is issued in this case that would reflect the new depreciation rates. This approach will eliminate any potential over- or under-recovery during the self-implementation period due to a change in [Detroit Edison's] depreciation rates.

8 Tr 1386-1387. Based on Mr. Stanczak's testimony, the utility asserts that the Commission should utilize Detroit Edison's old depreciation rates for ratemaking for the self-implementation period and the new depreciation rates prospectively after the final order is issued in the present proceeding. Detroit Edison's reply brief, p. 96.

Again, no opposition has been stated to adopting such a bifurcated rate process. Thus, based on Mr. Stanczak's testimony, as well as the lack of opposition to his proposal, the ALJ recommends that the Commission apply the old and new depreciation rates in the manner suggested by the utility.

C. Accounting and Other Revenue-Related Issues

In addition to direct revenue and expense issues like those addressed above, several other matters have arisen that, to greater or lesser degrees, can have an effect on either the precise amount of revenue the utility will collect or the manner in which it is treated upon its reciept. These range from relatively minor accounting requests to various revenue and expense tracking mechanisms.

1. Accounting for the Equity Component of AFUDC

Among the numerous other accounting changes sought in the course of this proceeding, Detroit Edison requested that the Commission grant accounting approval to charge the income tax effect of the equity component of AFUDC to a Financial Accounting Standard 109 (FAS 109) related regulatory asset account, rather than to deferred FIT expense, on a prospective basis, "consistent with FAS 109 and Cases Nos. U-5281 and U-10083." Detroit Edison's initial brief, p. 100 (citing 7 Tr 996-998). According to its witness in this regard, Ms. Lewis, the utility's current tax accounting for AFUDC equity "understates both the equity return and net income by recording a phantom deferred tax expense," which causes financial harm to the Company through "an under-recovery of the AFUDC-equity portion of plant." Id. According to Detroit Edison, this accounting change is consistent with relief granted to Mich Con in its most recent rate case via the June 3, 2010 order in Case No. U-15985. Id., (citing 7 Tr 999).

According to its witness, Mr. Birkam, the Staff agrees with the Company's proposed accounting treatment. Moreover, it appears that none of the other parties take issue with this request.

The ALJ thus finds that Detroit Edison's request is reasonable, and recommends that the Commission grant the requested accounting authority regarding this issue.

2. O&M Expense Accounting

The Staff requested that Detroit Edison be required to book three expenses--namely those related to EICP, SERP, and ESRP--in Account 426.5. See, Staff's initial brief, p. 46. Its bases this request on the following language from the USOA:

> All amounts included in the accounts prescribed herein for electric plant and operating expenses shall be just and reasonable and any payments or accruals by the utility in excess of just and reasonable charges shall be included in account 426.5 Other Deductions.

Id., pp. 46-47 (citing p. 8 of the USOA for Major and Non-Major Electric Utilities). The Staff contends that this provision applies because the Commission has repeatedly found the costs of Detroit Edison's EICP, SERP, and ESRP to be in excess of the just and reasonable standard, and has therefore denied any related cost recovery. Staff's initial brief, p. 47 (citing, the December 23, 2008 order in Case No. U-15244 and the January 11 order).[35]

According to the Staff, it makes this recommendation based on the "inordinate amount of time that [it] spends reviewing O&M accounts for items that the Commission has determined, per the [USOA], to not be just and reasonable costs for the provision of service to ratepayers." Id. (citing 11 Tr 2278). As noted by the Staff's witness on this issue, Mr. Welke, adoption of this recommendation will allow the Staff additional time to both: (1) review "emerging aspects of the applicant's O&M expenses by not needing to re-evaluate previously determined issues," and (2) compare the utility's historical earned rate of return consistent with the Commission's prior determinations of just and reasonable expenses "without burdensome normalizations." 11 Tr 2278-2279. The Attorney General agrees with the Staff's recommendation. See, Attorney General's reply brief, p. 26.

Detroit Edison objects to the Staff's proposal on the grounds that booking these expenses "below the line" in Account 426.5 erroneously assumes "that the Commission will always disallow [the utility's] recovery of costs in these categories, which improperly disregards the potential for cost recovery." Detroit Edison's reply brief, pp. 94-95 (citing 7 Tr 1132-1133). In support of this argument, the Company points out that although its request for EICP recovery was disallowed in a previous rate case, the Commission:

> [D]emonstrated its belief in the value of such compensation programs and suggested that an improved EICP would merit cost recovery, by stating that it 'strongly encourages Detroit Edison to continue refining its incentive compensation program for submission in a future rate proceeding.'

[35] The Staff goes on to note that the same has been true for Consumers, who has had recovery of similar expenses rejected in Cases Nos. U-14347, U-14547, U-15245, U-15645, and U-15986. Id.

December 23, 2008 order in Case No. U-15244, p. 38. Moreover, the utility claims it submitted just such a plan in this case. Detroit Edison's reply brief, p. 95. Finally, in response to the Staff's claim that it spends an inordinate amount of time reviewing O&M accounts, the Company contends that, by providing responses to the Staff's audit requests, "the time it takes Staff to review potentially disallowed costs is mitigated." Id.

While sensitive to the Staff''s concerns regarding the time and effort required to review O&M expenses, and recognizing the strain that it places on the Staff's resources (particularly with utilities filing rate case upon rate case since Act 286 took effect), the ALJ is not persuaded that the Staff's request should be granted. As noted earlier, Detroit Edison's new EICP comes closer than its predecessors to ming the longstanding requirements for cost recovery. Thus, this may not be the right time to record the program's costs in Account 426.5, especially if the utility follows Mr. Coppola's suggestion to work with the Staff to establish a mutually acceptable program prior to filing its next rate. Moreover, as noted by Detroit Edison witness regarding this issue, Ms. Uzenski, the definition of Account 426.5 is non-operating, and it is improper to record operating expenses [such as these] in a non-operating account. The ALJ therefore recommends that the Commission deny the Staff's request to require the utility to book all of its EICP, SERP, and ESRP expenses in Account 426.5.

3. RDM (Revenue Decoupling Tracker)

In Case No. U-15768, the Commission authorized Detroit Edison to implement a pilot RDM effective February 1, 2010. However, based on experience gained through the operation of that pilot program, the utility asserts that:

> [T]he current RDM does not meet the requirements of a well-designed RDM, which would remove [Detroit] Edison's disincentive to encourage Energy Optimization . . . by eliminating the negative financial impact on [the Company's] earnings resulting from the reduction of energy sales due to the implementation of its EO program.

Detroit Edison's initial brief, p. 94. The utility claims that its current RDM is defective base on to changes in the number of customers." Id., p.95. Specifically, the Company continues, small changes in the number of customers--due to such things as plant closings, customer additions, and the migration of customers to Electric Choice--have "a huge impact on changes in average use per customer." Id.

As a result, Detroit Edison proposes that the Commission terminate the existing RDM (whose structure is generally referred to as a Consumption per Customer Tracker) and replace it with an EO-only RDM (frequently called an EO Lost Sales Tracker). According to the utility, its new RDM would operate such that any sales reductions produced by the Company's EO program, as determined by the third-party evaluator in Detroit Edison's EO reconciliation proceedings, would be recovered through the RDM. See, Id., pp. 95-96. Specifically, any EO-related sales reductions--by customer class, as determined by the third-party administrator--would be multiplied by the average per kWh revenue for that particular class in order to determine the RDM surcharge revenue to be recovered from the utility's customers. See, Detroit Edison's initial brief, p. 96 (citations omitted). Moreover, the Company proposes that:

> [T]he Commission terminate the existing RDM on December 31, 2011, and replace it with a modified RDM beginning January 1, 2012, since [Detroit] Edison's EO program is reconciled annually on a calendar-year basis. For convenience, [the utility] proposes that the modified RDM be reconciled concurrent with [its] annual EO reconciliations. The RDM and EO reconciliations could also be consolidated for administrative efficiency.

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> [Also, because Detroit Edison] self-implemented a rate increase in this case, the base rates and customer count numbers for the current RDM should be updated effective with the date of self-implementation to reflect those levels that are reflected in the final order in this case. Updating the base at the point of self-implementation will ensure that self-implementation rates and the RDM, during the self-implemented period, will reflect the same sales and customer count data.

Id., (citing 8 Tr 1373-1374).

The Staff recommends that the Commission reject Detroit Edison's new RDM, primarily on the grounds that "its structure would be administratively burdensome." Staff's initial brief, p. 91. Although agreeing that the most efficient way of handling an EO Lost Sales Tracker is by operating it on a calendar year basis, the Staff proposes a different RDM that "is a much simpler mechanism" despite still taking into account all EO-related issues. Id.

Specifically, the Staff suggests adopting "a Simple Revenue Tracker," albeit one that, through the inclusion of specific "conditions and design parameters,"[36] effectively limits "the magnitude of revenues that would flow through the mechanism to a maximum likelihood of EO program revenue-losses." Id. (citing 11 Tr 2130). According to its witness on this issue, Katie J. Morgan, the Staff's proposal "creates a fusion of the best attributes of a Simple Revenue Tracker with those of an EO Lost Sales Tracker." 11 TR 2130. According to Ms. Morgan, this proposed RDM will:

> [S]ubstantially eliminate the utility's disincentive to promote its EO program, and will do so at load reduction levels equivalent to and exceeding the minimum statutory targets. With respect to revenue risk, the proposal also provides an equitable balance between risks properly borne by the utility, and those shifted to ratepayers as a trade for having received the benefit of [EO] programs.

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[36] The six specific conditions included in the Staff's proposed RDM are identified by Ms. Morgan in her testimony, at 11 Tr 2132-2133, and set forth on p. 92 of the Staff's initial brief.

11 Tr 2131. The Staff goes on to note that, although Detroit Edison's "pure EO Lost Sales Tracker operates only as a 'one-way street' reflecting only revenue losses," the Commission stated a clear preference for adopting an RDM that operates as a "two-way street" by reflecting both revenue shortfalls and excesses. Staff's initial brief, pp. 91-92 (citing the January 11 order, p. 67). Because its proposal is symmetrical (as preferred by the Commission), as well as being far less burdensome to administer, the Staff contends that it should be adopted as the replacement for the RDM that is currently in place.

Six of the other parties to this case weighed in on the matter of what, if any, RDM should be approved by the Commission. The first two, the Attorney General and ABATE, begin by asserting, as they have in past cases, that the Commission lacks the statutory authority necessary to authorize any form of RDM. See, Attorney General's reply brief, p. 33; ABATE's initial brief, p. 18. At that point, however, these intervenors part company, at least to a degree. Specifically, based on the analysis presented by his witness, the Attorney General appears to find neither of the two above-discussed proposals preferable to the other. While asserting that three substantive changes must be made to the Company's RDM plan to make its acceptable,[37] the Attorney General's witness (Mr. Coppola) went on to find five areas in which he felt the Staff's proposal was lacking, despite also finding four areas with regard to which he agreed with the Staff's

[37] In this regard, Mr. Coppola recommended (1) including provisions regarding weather normalization, (2) adjusting the potential impact of volumetric changes in sales to the largest of Detroit Edison's customers, and (3) conducting independent annual reconciliations without carrying over any resultant over- or under-recoveries. See, Attorney General's reply brief, p. 35 (citing 10 Tr 1837-1840).

suggested RDM.[38] As for ABATE, despite asserting that RDM should also be rejected as a matter of public policy, it concluded that the Staff's proposal was the better of the two, should the Commission decide to continue down the RDM path with regard to Detroit Edison. However, ABATE asserts that if the Staff's framework is adopted, it should be modified to (1) exclude large industrial customers from the RDM's application, and (2) impose RDM surcharges only in the event that the utility's sales levels, by customer class, "decline in absolute terms" as compared to the sales levels used to establish rates in the Company's most recent rate case. ABATE's initial brief, p. 19.

The next two parties to address this issue, namely Wal-Mart and Kroger, each appear to support Detroit Edison's proposal over that offered by the Staff (at least to a slight degree). Specifically, Wal-Mart "does not oppose the Company's shift to an EO-only mechanism," however it goes on to assert that "any such mechanism must reflect only the results of EO activities and not unrelated factors such as shifts in local economic conditions or the weather." Wal-Mart's initial brief, p. 6. Moreover, Wal-Mart recommends that any EO-only RDM adopted in this case should be modified to "more appropriately reflect the Company's actual lost margins due to EO for demand-metered rate schedules." Id. As for Kroger, although it specifically requests that the Staff's proposal be rejected, it goes on to find several areas of concern with either suggested RDM structure. The largest of these, it appears, is Kroger's belief that regardless of what shape any approved RDM program might take, "customers who are self-directing

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[38] Specifically, he agreed with (1) the Staff's definition of qualifying revenue, (2) its belief that any months associated with the test year should be excluded from the true-up calculations, (3) its suggestion that the first annual reconciliation period should begin with the first month following the end of the rate case's projected test year, and (4) the Staff's claim that operation of the RDM should terminate once the utility implements revised rates resulting from a new rate case filing. See, Id., p. 36 (citing 10 Tr 1856).

their EO activities pursuant to Section 93 of . . . Act 295 should be expressly exempted." Kroger's initial brief, p. 11; See also, Id., p. 13.

The last two parties to weigh in on this matter, Energy Michigan and the MEC,[39] both specifically recommend adopting the Staff's RDM proposal (although with slight modifications). For its part, Energy Michigan suggests that, in addition to being clarified in three ways,[40] the Staff's plan should be revised to compute any RDM surcharges or refunds "by means of a uniform distribution charge/credit for all customers and a uniform power charge/credit for all full service customers" (thereby shielding Electric Choice customers from the second portion of the computation). Energy Michigan's reply brief, p. 17. As for the MEC, it asks that "that the proposed caps on the RDM revenue adjustments be applied to a weather adjusted differential." MEC's initial brief, p. 16.[41]

Based on a close review of the proposed RDMs offered in this proceeding, the ALJ finds that the Staff's appears to be superior to that sponsored by Detroit Edison. Of particular importance is that the Staff's RDM is, as noted above, symmetrical, and thus reflects both revenue shortfalls and excesses. This is, as noted earlier, more in keeping

[39] Although the designation "MEC" is used throughout this PFD to refer to collectively refer to the Michigan Environmental Council, the National Resources Defense Council (NDRC), and the Environmental Law and Policy Center, page 15 of MEC's initial brief seems to indicate that the positions expressed with regard to the RDM are offered solely on behalf of the NDRC.

[40] Specifically, Energy Michigan suggested that Staff's proposal should more clearly indicate that (1) the term "bifurcated" means that two separate summations will be performed in computing the level of any surcharge or refund, (2) the phrase "total rate schedule revenue" means the total of the revenue in each separate rate schedule that is part of the summation, and (3) all components of the PSCR should be removed from revenues, and not simply those related to fuel and purchase power. Energy Michigan's initial brief, p. 14.

[41] Although the MEC also seeks to retain the CIM to address alleged "revenue volatility stemming from customer movement from full service to [Electric Choice] service" (MEC's initial brief, p. 16), the ALJ finds no factual basis for doing so. As discussed later in this PFD, the record reflects that Detroit Edison has reached the 10% cap on Electric Choice sales and that 1,200 customers are on the waiting list for that service. See, 11 Tr 2201.

with the preference expressed by the Commission in the utility's most recent rate case. See, January 11 order, p. 67. Moreover, the "Simple Revenue Tracker" form of RDM described by Staff witness Morgan does, indeed, appear to constitute a much simpler mechanism to apply, despite still accounting for all relevant EO-related issues. As for the various modifications suggested by other parties, some of which conflict with each other, the ALJ recommends that they be rejected unless and until the actual operation of the Staff's suggested RDM shows their adoption to be necessary.

For these reasons, the ALJ recommends that the Commission adopt the Staff's proposed RDM for use by Detroit Edison.

4. Miscellaneous Cost Trackers and Reconciliation Mechanisms

Four other expense trackers or reconciliation mechanisms have been established for Detroit Edison in recent years. These consist of the closely entwined LCRM and RRM (which deal with power line clearance and restoration matters, respectively), the UETM (which was set up to deal with problems arising from a sharp increase in the amount of customer payments that were late or well in arrears), and the CIM (which was designed to reconcile changes in Electric Choice sales--both up and down--from the level assumed in the utility's last rate case).

The Staff, through testimony provided by Dr. Nicholas I. Nwabueze, Director of the Commission's Regulated Energy Division, now recommends that the Commission "adopt, as a policy, a consistent position to deny further requests by utilities to expand the use of trackers and to begin the phasing out of existing trackers." 11 Tr 2197. As a result, Dr. Nwabueze asserted that the LCRM, RRM, UETM, and CIM should all be discontinued as part of the Commission's final order in this case. His primary basis for this requested action is that Act 286's enactment has "significantly diminished the need for trackers" by allowing utilities to rely on "projected costs and revenues [as opposed to historical, audited figures] . . . in developing its requested rates and charges, and to self-implement any proposed rate increase within 6 months of its filing." Id.[42]

With regard to the first three trackers and reconciliation mechanisms, namely the LCRM, RRM, and UETM, Dr. Nwabueze testified--in part--as follows:

> The use of trackers was for the purpose of allowing utilities to have current cost recovery for volatile costs. The Commission's past ratemaking practice of [requiring use of] a historical test year, even adjusted for known and measurable changes, was not conducive to current cost recovery for volatile costs.
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> * * *
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> Therefore, the utilities requested, and the Commission approved, trackers for recovery of volatile costs. Some requested trackers, such as the UETM, [to replace] the previous multi-year averaging methods adopted by the Commission for volatile costs. Since most of these trackers predate the adoption of [Act 286], and since the purpose of the requested trackers was to allow the utilities current cost recovery of volatile costs, which, by definition, can be accomplished through the use of projected costs for a future 12 month period and the self-implementation provisions of [the Act], Staff recommends that the Commission rely on [Act 286] as the vehicle to enable the utilities current cost recovery of volatile costs and, therefore, to discontinue Detroit Edison's current UETM, its current [RRM], and its [LCRM].

11 Tr 2198-2199.

With regard to the last of these mechanisms, the CIM, Dr. Nwabueze cited three additional reasons for its discontinuation. These related to (1) the effect of the 10% cap on Electric Choice sales established by Act 286, (2) the lack of synchronization between the RDM and the CIM, and (3) the fact that the Commission recently discontinued a

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[42] The Attorney General agrees with the Staff's assertions in this regard. See, Attorney General's reply brief, p. 32 (citing Staff's initial brief, pp. 87-89).

similar mechanism for another large Michigan electric utility. Specifically, he testified that:

> The 10 percent choice cap established a ceiling on Choice sales which limits Detroit Edison's exposure to the impact of fluctuating Choice sales. Choice sales can fluctuate from zero to 10 percent of prior year sales, but the potential for extreme negative outcomes associated with Choice sales above 10 percent have been mitigated by the 10 percent cap. As such, the CIM is no longer needed in order to achieve mitigation. This extreme negative outcome mitigation via the 10 percent cap is further evidenced by about 1,200 customers that are on the Choice waiting list in Detroit Edison's service territory, representing nearly 700,000 [MWh] of energy supply served by Detroit Edison that would otherwise be served by an alternative supplier if not for the 10 percent cap.
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> * * *
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> The approved-RDM compares average actual electric use per customer class to the level of average use per customer authorized by the Commission in Case No. U-15768. The calculation of the average use per customer class includes Choice customers and Choice load. As such, if a customer elects choice supply, then the loss of that Choice load impacts the average actual usage that is built into the RDM surcharge/credit calculation. Similarly, the CIM would also capture the revenue impact of the Choice load loss, therefore resulting in a double recognition of the same event.
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> * * *
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> The Commission recently found that the ECIM (Electric Choice Incentive Mechanism) has become unnecessary. The Commission found [in its November 2, 2009 order in case No. U-15645] that the effect of tracker mechanisms, together with statutory restrictions on Choice, mitigates much of the potential for revenue instability. As such, the Commission discontinued the CIM for Consumers Energy.

11 Tr 2201-2203. Based on this testimony, the Staff contends that--as with the LCRM, RRM, and UETM--Detroit Edison's CIM is unnecessary and should be discontinued.

ABATE likewise recommends that the Commission eliminate all four of those trackers, particularly if some form of RDM is continued as a result of this case. <u>See</u>, ABATE's initial brief, p. 20. According to its witness on this issue, Mr. Selecky:

Rate adjustment mechanisms increase financial risk and rate volatility for customers by giving the Company additional avenues to increase customer rates between rate cases. Thus, additional adjustment mechanisms would only heighten the already high level of risk that would be imposed on customers via the RDM. Therefore it is vital to control the proliferation of other rate mechanisms that could impose additional rate surcharges on the Company's customers outside of a base rate case.

9 Tr 1463-1464. ABATE thus suggests, as did the Staff, that the LCRM, RRM, UETM, and CIM all be discontinued.

Although taking no position on the other three trackers discussed above, MCAAA opposes elimination of the LCRM. In so doing, it contends that the Staff's rationale for eliminating the RRM, UETM, and CIM (i.e., that they serve primarily to protect the utility, and that such protection is no longer needed) does not apply to the LCRM. This is because, MCAAA argues, the LCRM "is the one mechanism that protects ratepayers."[43] MCAAA initial brief, p. 55.

For its part, Detroit Edison proposes that, should the Commission both adopt the utility's proposed version of the RDM and continue to use a five-year average to establish projected restoration costs, the RRM should be eliminated.[44] See, Detroit Edison's reply brief, p. 88. The Company further proposes that, because the LCRM was established in connection with the RRM, the elimination of the RRM justifies the LCRM's elimination as well. See, Id. As for the UETM, Detroit Edison asserts that if the Commission adopts its recommended level of uncollectible expense (namely $72.9 million), the UETM should be suspended. Id., p. 91. If, however, the Commission

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[43] In response to MCAAA's request to retain the LCRM, Detroit Edison points out that the Commission recently discontinued use of Consumers' forestry tracker, after which the LCRM was modeled. See, Detroit Edison's reply brief, p. 89 (citing the Commission's November 4. 2010 order in Case No. U-16191, p. 34.)

[44] Conversely, the utility asserts that "If, however, the Commission does not approve Edison's proposed RDM, then Edison requests that the Commission retain the current RRM." Detroit Edison's reply brief, p. 88.

adopts an uncollectible expense level lower than that figure, the utility proposes that the UETM be retained for use during the plan year. Id.

However, with regard to the CIM, Detroit Edison asserts that it should be retained, albeit in a modified form. According to the utility, the CIM "has been, and continues to be, a critical ratemaking tool for the Commission and [the Company] because the level of Electric Choice has been highly variable in the past." Detroit Edison's initial brief, p. 114 (citing 8 Tr 1364-1365). Thus, the utility continues:

> Due to the inherent level of uncertainty and volatility in Electric Choice sales, Edison proposes to continue the CIM in order to protect itself and its customers from future variability in Electric Choice sales. It is particularly imperative that the Commission retain the CIM if the Commission adopts Edison's proposal to defer the recent increase in Electric Choice levels.[45]

Id., p. 115 (citing 8 Tr 1364, 1393). Moreover, the Company seeks to modify the CIM by eliminating the 90/10 sharing and 200 GWh deadband, assuming that the Commission adopts its proposal to defer the portion of its requested rate relief associated with Electric Choice. See, Id. As a result, Detroit Edison strongly advocates retaining the CIM for application during the test year.

The ALJ finds persuasive the arguments presented by the Staff and ABATE, and which are supported by the testimony of Dr. Nwabueze and Mr. Selecky. As correctly noted by the Staff with regard to this issue, and as remarked upon earlier in this PFD, Act 286 has significantly reduced the risk borne by utilities like Detroit Edison. Specifically, with the right to seek rates based upon projected test year figures, the

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[45] As will be addressed later in the PFD, apparently recognizing the deleterious effect that a $443 million rate increase could have on its customers, Detroit Edison suggested three proposals that the Commission could approve to off-set or defer, for future recovery, a portion of the requested rate relief. One of those proposals was to delay recognition of the $123 million increase sought in this case that stems from increases in Electric Choice.

ability to self-implement some or all of a requested rate increase within six months of its filing, and the requirement that a final Commission order be issued within one year of that filing date, the need for trackers to adjust rates due to changing circumstances between rate cases has been greatly diminished. This is true of each of the four trackers at issue here.

Moreover, this is particularly true with regard to the CIM. As discussed in detail by Dr. Nwabueze, the 10% cap on Electric Choice sales that Act 286 established (as well as the 1,200 customer waiting list) provides further protection for the utility, and thus further support for eliminating the CIM. Finally, because this PFD rejects--in a subsequent section--Detroit Edison's proposed mitigation of the requested rate increase (and thus includes the effect of Electric Choice in the computation of recommended rates), the utility's arguments concerning the need for the CIM are not persuasive.

For the reasons expressed by both the Staff and ABATE, the ALJ recommends that the Commission discontinue Detroit Edison's LCRM, RRM, UETM, and CIM.[46]

5. The Staff's Tracker-Based Rate Timing Request

One related issue exists regarding Detroit Edison's various cost tracking and reconciliation mechanisms, and it involves the timing of rate increase likely to emanate from this proceeding. Specifically, as set forth in testimony provided by Mr. Ancona, the

[46] Based on testimony supplied by its witness, Alexander J. Zakem, ABATE asserted in this proceeding that the most accurate way to "evaluate the true impact of Electric Choice would be to consolidate the CIM and the PSCR proceedings or conduct those proceedings in parallel. See, ABATE's initial brief, p. 9. Detroit Edison argued against combining the two proceedings, pointing out that doing so "would add additional complexities to both the CIM and the PSCR reconciliations by requiring a separate calculation supporting the incremental impact on PSCR costs" associated with the movement of customers to and from Electric Choice. Detroit Edison's reply brief, p. 104. The ALJ concurs with the utility, and recommends that these proceedings continue to be conducted separately. In so doing, the ALJ recognizes that, based on his recommendation to discontinue the CIM, ABATE's argument in favor of combining these two processes will--assuming Commission acceptance of that recommendation--be moot shortly.

Staff requests that if a rate increase is approved in this case, it not be allowed to take effect before January 1, 2012. Staff's initial brief, p. 82. According to Mr. Ancona, three reasons exist for delaying the effective date of any potential increase from October 29, 2011 (the date by which the Commission must issue its final order) to the start of 2012, which he described as follows:

> 1) Implementing the rate increase January 1, 2012 will maintain the integrity of the trackers and make their 2011 reconciliations less administratively complex. Staff has proposed that the [UETM, CIM, RRM, and LCRM] be discontinued or suspended. Each of these trackers is on a calendar year reconciliation schedule. At least one of the reasons for that is because there are often accounting adjustments made at year end. Having to interpolate such adjustments for a reconciliation period ending [in late] October would add complexity to what has generally been a routine process.
>
> 2) Implementing the rate increase January 1, 2012 will serve to neutralize the impact of customers prepaying for capital expenditures and inflationary increases that have not yet occurred. As previously mentioned, a final order in this case must be issued by October 2011 while the projected test year extends through March 2012. Detroit Edison projects that [it] will incur about $460 million in capital expenditures during the period November 2011 through March 2012 as shown on Exhibit S-7. If the rate increase goes into effect in October 2011, it will provide Detroit Edison cost recovery for expenditures yet to be incurred and, as with projections, may not be incurred. Delaying the increase until January 1, 2012, more towards the midpoint of the remaining test year, will provide customers some relief from prepaying.
>
> 3) The Wolverine [wholesale for resale] contract extends through December 31, 2011. The expiration of this contract will shift costs currently allocated to the wholesale jurisdiction to the retail jurisdiction for the purposes of setting rates. Since a final order in this case must be issued by October 2011, and the end of the projected test year extends through March 2012, some mechanism must be developed to take all three of these dates into consideration when setting rates. Detroit Edison has proposed to set rates assuming the contract has expired, and then credit customers with revenue collected from Wolverine until the contract actually expires. Staff opposes this proposal because it opens the door for retail customers to make up shortfalls attributable to wholesale rates, rates in which the Commission has no authority. Staff therefore strongly recommends the delay of the increase until January 1, 2012.

11 Tr 2290-2291. Mr. Ancona went on to testify that the short delay suggested by the Staff would not result in substantial harm to the utility. See, 11 Tr 2291-2292

Detroit Edison objects to this proposed delay in the effective date of any rate increase provided in this matter. Specifically, it asserts that the delay (which would push final rate relief in this case to 14 months after the Company made its filing) would be "detrimental to [the utility], contrary to the normal rate-setting process, and inconsistent with [Act 286]." Detroit Edison's initial brief, p. 99. (citing 8 Tr 1390-1391). Moreover, it contends that approving the delay would threaten the Company's constitutional rights. See, Detroit Edison's reply brief, p. 91 [citing Smith v Illinois Bell Telephone Co, 270 US 587, 591 (1926)].

The ALJ does not find Detroit Edison's arguments persuasive on this issue. While Act 286 does set specific deadlines for both self-implementation of the requested rate increase and issuance of the Commission's final order, it is silent regarding when any rates addressed in the final order must take effect. See, MCL 460.6a(1)-(3). Moreover, past Commission practice, both before and after Act 286 became law, frequently provided for a delay between issuance of the order authorizing the change in rates and the effective date of those changes. For example, in Detroit Edison's most recent general rate case, the Commission's final order provided time for the utility to prepare and file new rate and tariff sheets comporting with that order's findings, and also provided the other parties to the proceedings time to review and comment upon them. See, January 11 order, p. 86. As a result, the rates under which Detroit Edison currently operates were not given immediate effect, despite the fact that they were developed pursuant to Act 286. Furthermore, based on the detailed analysis provided by Mr. Ancona and quoted in part above, the ALJ finds that delaying the effective date of the Company's rates by approximately two months would not be excessively detrimental to the utility or its shareholder, DTE. Thus, because it would appear to make reconciliation of the various trackers much easier for all parties, as well as provide an opportunity to prepare accurate rate and tariff sheets (including the effect that Detroit Edison's new depreciation rates would ultimately have on those rates), the ALJ recommends that the Commission grant the Staff's request and rule that any rate increase approved in this case not take effect before January 1, 2012.

VI.

SUGGESTED MITIGATION AND REVENUE DEFICIENCY

As mentioned in an earlier footnote in the portion of the PFD discussing whether the CIM should be retained for use during the test year, Detroit Edison (apparently recognizing the effect that a $443 million rate increase could have on its customers) initially proposed three actions that could be taken to off-set or defer, for future recovery, a portion of the utility's requested rate increase. The first proposal was that, rather than immediately collecting the full cost of pension and OPEB expense through the rates approved in this proceeding, the Company could be allowed to recover a portion of those costs in future periods. However, as noted by the utility, its support for this proposal waned as the proceedings got further into the 2011 calendar year, and it now "agrees with the Staff that this deferral is no longer necessary." Detroit Edison's reply brief, p. 98. The second suggestion was to reduce Detroit Edison's Nuclear Decommissioning Surcharge, a proposal that was adopted on its own merits earlier in this order due to the utility's election to pursue an operating license extension that would allow Fermi 2 to operate for an additional 20 year, and thus need not be addressed at this point. The third offer was to delay immediate rate recognition of the $123 million recovery sought in this case arising from recent increases in Electric Choice sales.

Thus, at this point, all that remains to be specifically addressed is the third proposal. However, it now appears that this suggested form of mitigation has also gone by the boards. Specifically, in its reply brief, Detroit Edison renewed its assertion that this offer "assumes that the Commission retains the CIM with certain [utility-supported] modifications." In light of the ALJ's earlier recommendation to discontinue the CIM in its entirety, it now appears that this last vestige of Detroit Edison's mitigation proposal is moot. As a result, the ALJ recommends that the Commission reject all three components of that proposal.

Based on the foregoing findings and recommendations, Detroit Edison's total company revenue deficiency for the test year can be computed as follows:

Rate Base		$10,067,825,000
Rate of Return		X 6.41%
Income Required		$ 645,408,000
Adjusted Net Operating Income	-	$ 549,758,000
Income Deficiency		$ 95,650,000
Revenue Multiplier		X 1.6355%
Revenue Deficiency		$ 156,435,000

VII.

COST OF SERVICE AND RATE DESIGN

Section 11(1) of Act 286, MCL 460.11(1), provides that "The cost of providing service to each customer class shall be based on the allocation of production-related and transmission costs based on using the 50-25-25 method of cost allocation." In the December 23, 2008 order in Case No. U-15244, the Staff claimed, and the Commission agreed, that the allocation formula mandated by the Legislature should be understood to consist of a 50% weighting of peak demand, a 25% weighting of on-peak energy use, and a 25% weighting of total energy use. The same allocation formula was adopted for use in Detroit Edison's most recent rate case, U-15768. See, January 11 order, p. 74.

Interestingly, Act 286 is silent regarding which coincident peak measurement should by applied when establishing the new peak demand component of the weighted cost allocation. However, the Commission has, in Detroit Edison's most recent rate case, expressed a preference for using the 12 coincident peak (12CP) method. See, January 11 order, pp. 74-76. Consistent with that ruling, the Staff and the utility allocated both production and transmission costs using the 12CP method to measure the coincident peak demands for the first component of the 50-25-25 methodology when conducting their respective cost of service (COS) studies in this proceeding. None of the parties expressly object to their use of the 12 CP 50/25/25 method, and the differences in the specific results produced by the Staff's and the Company's COS studies appear to arise primarily from the fact that they start with different levels of costs. Thus, because earlier sections of the PFD are more closely aligned with the Staff's suggested level of costs than those proposed by Detroit Edison, the ALJ recommends that the Commission adopt the Staff's COS methodology as the "jumping off point" for its subsequent findings regarding cost allocation.

Having established the basic parameters for the allocation of costs among the utility's various rate classes, we now turn to the specific COS and rate design issues where dispute continues to exist among the parties.[47]

A. FIT Allocation

The only area of dispute between Detroit Edison and the Staff with regard to cost allocation involves the issue of how to allocate FIT expense. Specifically, the utility used a combination of ten separate inputs, functionalized on a jurisdictional level on the basis of net plant, labor, or production, and then assigned the resulting amounts to its various rate classes. This allocation methodology is consistent with that adopted by the Commission's January 11, 2010 order in Case No. U-15768.

In contrast, the Staff (based on testimony from Charles E. Putnam) treated FIT "as only one input and functionalizing and allocating the entire amount on the basis of pretax net operating income." 11 Tr 2347. According to Mr. Putnam:

> [T]he functionalization and allocation of income tax related items on pretax net operating income is compatible with the way the tax is actually calculated and is therefore the best theoretical basis for allocation.

Id. The Staff therefore asserts that its allocation methodology should be adopted. The Attorney General supports the Staff in this regard. Attorney General's reply brief, p. 27.

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[47] Numerous COS and rate design issues that were raised in the course of either the hearings or the first round of briefing have now been either abandoned, resolved by the parties, or rendered moot by previous rulings in this PFD. For example, although it initially took issue with Detroit Edison's treatment of the residential class' rate subsidy, the Staff now "accepts the Company's rebuttal argument and recommends that the residential subsidy be recalculated in this case following the Commission Order." Staff's reply brief, p. 31. In addition, although Kroger expressed opposition to the rate spread proposal that comported with the utility's "mitigation-based" rate increase, that issue has been rendered moot by the PFD's rejection of the Company's plan for mitigation. With few exceptions, the PFD will remain silent on matters relating to COS and rate design where no reasonable dispute now exists.

The ALJ agrees with the Staff and the Attorney General with regard to this matter. As noted by Mr. Putnam, subsequent to the January 11 order, the Commission revisited this issue and specifically agreed with the Staff's assertion that assigning FIT costs on the basis of pretax operating income is the best method of allocation. 11 Tr 2247 (citing the Commission's November 4, 2011 order in Case No. U-16191). The ALJ therefore recommends that the Commission adopt the Staff's proposed methodology.

B. Establishing a Large Customer Contract/Healthcare Rate Class

The Hospitals have, since 1996, taken service through large customer contracts (LCCs) which are set to expire on December 31, 2011. The parties agree that the rates set forth in those LCCs were at least somewhat below the rates that the Hospitals would have paid had they taken service under Detroit Edison's otherwise applicable tariffs. As part of its proposal to eliminate all rate subsidies that currently exist within its rate structure by October 5, 2013, as required by Act 286, the utility plans to refrain from signing new LCCs with the hospitals, thus returning them to the Company's general rate structure (which, based on the Hospitals' electrical usage levels and load data, would likely place them on Rate Schedule D6).

The Hospitals object to that proposal, asserting that being moved to Rate D6 would boost their collective electric costs by approximately $8 million annually, which they contend is "almost a 20% increase." Hospitals' initial brief, p. 2. Moreover, their witness, Frank W. Radigan, testified that "the indexed rate of return for LCCs" reflected in the utility's own COS studies from 2002, 2006, and 2008 "shows that the current rates LCCs pay are already providing revenues to Detroit Edison that are at or above the cost to serve [these] customers" because they exceed the Company's average rate of return.

11 Tr 2110-2111. The Hospitals thus request that “a new service class be established and that current LLC customers [be made] eligible to be placed into this service class when their contracts expire.” Hospitals’ initial brief, p. 3. In the alternative, the Hospitals suggest that the Commission either “create a Large Health Care Rate Class which includes a rate based on cost of service to large health care providers” or simply “extend the existing LCCs.” Hospitals’ initial brief, p. 26. In any event, the Hospitals assert that (as stated by Mr. Radigan), the rates imposed on them under any scenario “should, at most, be the rates stated in the Hospitals’ current contracts.” 11 Tr 2102.

The ALJ finds that this request should be rejected on either of two grounds. The first is that, as noted by the Staff, the Hospitals have not persuasively demonstrated that their energy usage characteristics are “sufficiently different from existing rate schedules within the commercial (secondary) or industrial (primary) classes to warrant, based strictly on cost allocation principles, the creation of a separate class or rates for LCCs.” Staff’s initial brief, p. 64. The second is that the Hospitals’ assertion that the current charges they pay are cost-justified simply because the indexed rates of return (IRORs) for the LCC class exceed the average return is based on “an unsound premise.” Detroit Edison’s reply brief, p. 100; See also, Staff’s initial brief, pp. 63-64. As explained by Timothy A. Bloch, the IRORs relied upon by Mr. Radigan are based on the Company’s as-filed COS studies in which current rates for all but one class were insufficient to meet costs. See, 7 Tr 768-769. Further, as Mr. Bloch goes on to note, “the best indication” of whether or not the LCCs are cost justified “would come from a COS study with the LCCs as a separate cost of service class.” 7 Tr 769. The Company’s as-filed COS study in this case simply included the primary LCCs in the D6/Other category of rates and the secondary LCCs in the D4 rate class. However, in response to one of the Hospital's discovery requests, the Company provided them with a COS study based on Detroit Edison's as-filed study, but modified to show the secondary and primary LCCs separately, instead of including them in with the D4 and D6/Other rates. The result of that modified COS study indicates that the LCC primary group has a revenue deficiency, which Mr. Bloch pointed out "is a clear indication that they are below cost-to-serve." Id.; See also, Exhibit A-27, Schedule TAB-1.

For the reasons stated above, the ALJ recommends that the Commission reject each of the three alternatives suggested by the Hospitals.

C. Elimination of the D6 Distribution Energy Charge

Wal-Mart correctly notes that Detroit Edison's current D6 distribution rate design has two forms, one covering its large full-service customers and the other covering its Electric Choice customers. Wal-Mart's initial brief, p. 2. Each of these groups is assessed a per-month customer charge, as well as a per-kilowatt (kW) demand charge. See, Exhibit A-14, Schedule F3, p. 27. However, the full-service D6 customers' rates also include a per kWh energy charge, while the Electric Choice customers' do not. Id.

In this proceeding, Detroit Edison has proposed to modify the primary D6 full-service rate to reduce the percentage of distribution costs to be recovered via the per-kWh energy charge from approximately 53% to 23% (and effectively shifting the left over costs to other customers), all as part of its above-mentioned quest to phase-out rate subsidies. Although conceding that this proposed reduction "represents some progress toward an appropriate cost-based rate design for the D6 full-service distribution rate," Wal-Mart goes on to assert that the Commission should move that rate "all of the way to a cost-based rate design" by eliminating the entire energy charge component and, instead, collecting that portion of the distribution charge through the "per kW distribution demand charge." Wal-Mart's initial brief, p. 3.

The ALJ disagrees with Wal-Mart on this point, and finds that its request should be denied. As explained by Detroit Edison witness Bloch, Wal-Mart's recommendation is apparently based on both "an inaccurate assumption regarding distribution cost allocation" and a 'flawed premise' [that fails to] recognize that D6 full-service distribution rates are recovering not only distribution-related costs, but also costs related to the overall D6 rate subsidy." Detroit Edison's initial brief, p. 113. As noted by the utility, its proposed D6 full-service rate design includes both energy- and demand-based distribution charges that, due to their presence, provide flexibility by allowing the Company to alter the D6 rate in a manner that achieves "more uniform impacts across the three voltage levels offered under D6, as well as across the hour-of-use demand range."[48] Id. As Mr. Bloch noted, designing rates in this manner provides an equitable sharing of the subsidy costs currently contained in the D6 rate. See, 7 Tr 769-770.

As a result, the ALJ recommends that the Commission deny Wal-Mart's request to eliminate the entire energy charge component of the full-service D6 rate, at least at this point in time.

D. Voltage-Level Cost Allocation for the D6/Other Rate Class

One of ABATE's witnesses, James W. Collins, noted that Detroit Edison's COS study only identifies the total cost of serving the entire D6/Other class, and that the

[48] The Staff concurs with Detroit Edison on this issue, asserting that "By maintaining the volumetric charges, there is greater flexibility in achieving a more uniform impact between voltage levels within the D6 rate class," and it therefore agrees with the utility that--at least for the time being--it is "appropriate to maintain both energy and demand based" distribution charges. Staff's initial brief, p. 75.

utility did not perform “a separate intraclass calculation to identify the total costs to serve the separate voltage level customers contained within the D6/Other cost of service class.” 9 Tr 1499. The same is true, it appears, with regard to the Staff’s COS study. See, Staff’s initial brief, p. 70. According to Mr. Collins, a COS study that identifies the total cost to serve the transmission, sub-transmission, and primary customers within the D6/Other class would “provide necessary information to ensure that each customer voltage rate is based on cost to serve.” 9 Tr 1500. Failure to use such a study to allocate costs, he continues, “can lead to intraclass rate subsidies.” Id. ABATE thus asserts that an analysis performed by Mr. Collins in an attempt to fill this void, so to speak, should be applied in this case to provide a more accurate allocation of costs to the various voltage level groups within the D6/Other class. See, ABATE’s reply brief, pp. 4-5.

While the Staff agrees that a COS study reflecting the different costs of serving the transmission, sub-transmission, and primary voltage level customers that populate the D6/Other class would be helpful in identifying (and subsequently eliminating) intra-class subsidies, it apparently does not feel that Mr. Collins’ analysis is adequate for doing so in the present case. Thus, it is simply recommended that the Commission “direct the Company in its next rate case filing to supply the appropriate information and address the intra-class allocations directly,” either in its COS study or as an attached schedule. Staff’s initial brief, p. 70.

The ALJ agrees with the mid-ground position recommended by the Staff. As noted in its November 2, 2009 order in Case No. U-15645 and its May 17, 2010 order in Case No. U-15986, the Commission supports the elimination of intra-class subsidies for service provided at different voltage levels. Nevertheless, the record assembled in this case does not lend itself to performing as accurate an allocation of costs between the various members of the D6/Other class as is necessary in the course of a general rate case like this. Specifically, although ABATE repeatedly refers to the document assembled by Mr. Collins and offered into evidence as AB-2 as a cost of service study, that designation appears to at least be somewhat overstated. Upon review of this document, it appears to be more of a comparative analysis and extrapolation of information provided by another party than the type of stand-alone COS one would prefer. As a result, the ALJ recommends that the Commission deny ABATE's request to immediately allocate the costs assigned to the D6/Other rate class based on voltage levels, and instead simply order Detroit Edison to include, as part of its initial filing in its next general rate case, a COS that allows for the type of intra-class cost allocation along voltage levels that ABATE sought in the present proceeding.

E. R10 Rate Class Cost Allocation

ABATE's next area of concern involves the customers taking interruptible service on Rate R10. According to ABATE, the COS studies performed by Detroit Edison and the Staff allocate an excessive level of cost to these customers for two reasons. First, ABATE contends, those studies ignore the fact that 35% of the R10 load is served through purchases from outside generators made through MISO, whereas MISO provides only 13% of the power needed to satisfy standard tariff customers' load. See, ABATE's reply brief, p. 3. Thus, ABATE reasons, R10 customers should be allocated a much lower share of the costs arising from the operation of Detroit Edison's production facilities. Second, ABATE notes that, since the enactment of Act 286, the utility's recognition that R10 customers take interruptible (as opposed to firm) service, has led it to provide a 70% discount on the demand component of the allocation methodology. See, ABATE's initial brief, p. 9. Prior to that time, and due to the use of a 75/25 fixed production cost allocator (albeit in conjunction with a 65% discount), R10 customers had been receiving a higher actual credit than they currently do. See, 9 Tr 1433-1444. ABATE thus contends that the production cost allocation to R10 customers should be reduced to at least return them to their previous situation.

The ALJ does not find either of ABATE's arguments persuasive. With regard to the first, Detroit Edison witness Bloch correctly notes that:

> The fact that the Company may purchase power [through MISO] to lower the variable cost to serve its customers does not mean customers no longer have cost responsibility for the fixed capital investment the company has made in its generation.

7 Tr 771-772. Because ABATE's argument erroneously implies that when production equipment is not currently providing power, maintaining that equipment has no benefit to R10 customers for either standby generation or grid reliability purposes, that claim must be rejected. As for ABATE's second assertion, to the effect that the actual production credit received by R10 customers should be restored to its earlier--and slightly higher--level, ABATE overlooks two important facts. These are that (1) the reduction in R10 credit arose directly from the Legislature's decision to mandate the 50/25/25 allocation methodology, and not from some flaw in either the utility's or the Staff's COS studies, and (2) the methodology employed by the utility and the Staff in preparing their respective COS studies was accepted by the Commission in Detroit Edison's most recent rate case. For these reasons, the ALJ finds that ABATE's arguments in favor of reducing the amount of production costs allocated to Detroit

Edison's R10 customers are flawed, and recommends that the Commission reject ABATE's requested relief.

F. Retail Open Access Customer Charge

The Staff recommends establishing a one mill per kWh Retail Open Access (ROA) Customer Charge, to be applied to each Electric Choice customer, ostensibly as a contribution by these customers to Detroit Edison's environmental compliance costs. See, Staff's initial brief, p. 76. The Staff's legal basis for this request is its view that, in light of the broad ratemaking authority provided by 1939 PA 3, MCL 460.6(1), the proposed implementation of this charge "does not fall outside the scope of the Commission's authority." Staff's reply brief, p. 33. Moreover, the Staff continues, the practical basis for this assessment is that (1) the utility incurs many production-related expenses for resources that have served current ROA customers in the past and are fully available to serve them again should they return to full service, (2) when ROA sales were weak and the Electric Choice program was experiencing declining participation, the Company's full-service customers were called upon to contribute over $18 million toward the payment of stranded costs arising from that program,[49] and (3) ROA sales are now quite strong, with customer participation at the 10% cap established by Act 286 and another 1,200 potential participants on Detroit Edison's Electric Choice waiting list. See, Staff's initial brief, pp. 76-81.

With regard to the implementation of its proposed ROA Customer Charge, the Staff contends that "the simplest and most direct approach for reflection [of the ROA customers' contribution] in full-service customers' rates is to have all revenue" collected

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[49] See, the September 26, 2006 order in Case No. U-13808-R, p. 26.

via this charge credited against the utility's PSCR costs incurred during the same period. Id., p. 79. However, the Staff continues, it "would not be opposed to taking the revenue from the one mill charge and setting it aside, in a trust, to cover costs related to retiring non-nuclear production plant." Id., p. 77. In any event, although not foreclosing the possibility of the ROA Customer Charge becoming a permanent part of Detroit Edison's rate structure, the Staff asserts that it should, "at a minimum," remain in effect long enough for the Company's full-service customers to recover the $18 million contribution toward stranded costs. Id., p. 80.

Detroit Edison supports the Staff's proposal to establish the one mill per kWh ROA Customer Charge. According to the utility, "the reality [is] that Electric Choice and its cost-free return to service provisions provide Electric Choice customers a valuable free option to return to Detroit Edison's cost-based, regulated electric generation" if and when wholesale prices increase to a level found unacceptable to those customers. Detroit Edison's reply brief, p. 106. Similarly, the Attorney General concurs with the Staff and fully supports its proposal. In so doing, he reiterates that, by way of the Commission's September 26, 2006 order in Case No. U-13808-R, full-service ratepayers were required to forfeit $18,671,000 in erstwhile revenue credits from third-party sales solely to reduce stranded costs that "directly resulted because customers switched from full-service rates to ROA rates." Attorney General's reply brief, p. 31.

In contrast, Kroger, ABATE, and Energy Michigan oppose the Staff's proposal on multiple grounds. These include assertions to the effect that: (1) because the suppliers that provide service to ROA customers also face environmental compliance costs, Staff's proposal could result in them paying twice for such compliance, (2) the one mill per kWh adder is arbitrary and does not reflect costs incurred to currently provide service to ROA customers, (3) imposition of this charge would be inconsistent with Act 286's mandate to bring rates to COS levels, (4) neither of the COS studies offered by the utility or the Staff reflect the effects of this charge, (5) ROA customers already contribute to the Company's production costs via nuclear decommissioning and securitization surcharges, (6) ROA customers' existence already benefits full-service customers by reducing overall PSCR costs, and (7) the effect of Electric Choice customer migration upon full-service customers due to unrecovered production costs is, if anything, very small. See, Kroger's initial brief, p.14, ABATE's initial brief, p. 21, and Energy Michigan's initial brief, pp. 5-6.

Notwithstanding claims to the contrary, the ALJ agrees with the premise espoused by the Staff, Detroit Edison, and the Attorney General to the effect that at least some portion of the utility's production costs serve to benefit ROA customers, even if such benefit is solely due to those customers' ability to rest assured that, should the wholesale price of electricity rise to what they ultimately view as an unacceptable level, they can immediately return to the Company's service without financial penalty. Over much of the past decade, Detroit Edison has made significant investment in its production plant, most recently with regard to pollution control equipment.[50] Such equipment will allow the utility to continue its compliance with increasingly strict environmental regulations and standards. Moreover, the financial burden that these capital expenditures place on many full-service customers has been enhanced by (1) a declining customer base over the last several years, and (2) a rise in residential

[50] For example, in this proceeding alone, the Company seeks to recover approximately $377 million in capital expenditures for environmental equipment it expects to purchase and have installed between July 2010 and March 2012. See, Staff's initial brief, p. 77.

customers' monthly bills as a result of rate de-skewing. Finally, a review of the Commission's September 26, 2006 order in Case No. U-13808-R indicates that, indeed, full-service ratepayers were required to forfeit $18,671,000 in potential revenue credits simply to reduce stranded costs that arose from Electric Choice customers' switch from full-service to ROA rates.

For these reasons, the ALJ finds that (as suggested by the Staff, and supported by both the utility and the Attorney General) ROA customers should be required to pay one mill per kWh toward defraying the Company's cost of environmental compliance. It is therefore recommended that the Commission adopt the Staff's proposal to implement an ROA customer charge as part of its final order in this proceeding.[51]

G. Experimental Load Aggregation Provision

Detroit Edison's experimental load aggregation provision (ELAP) allows large customers with multiple locations to aggregate their power supply billing demands. The ELAP had been set to expire at the conclusion of the utility's prior rate case, but (based on the Company's request to extend it and the lack of opposition to that request) the provision was allowed to continue for one more rate case cycle. See, the January 11 order, p. 78. Thus, according to the utility's current tariffs, the ELAP is again scheduled to automatically expire, this time upon issuance of the Commission's final order in the present case.

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[51] In so doing, the ALJ expresses no opinion regarding whether the funds obtained through this surcharge should be applied toward production costs in general, environmental costs within that COS area, or segregated in a trust account for future use in funding non-nuclear decommissioning operations. This is due to the fact that the record fails to provide a clear basis for which of those options would be most beneficial to Detroit Edison's full-service customers. The ALJ does note, however, that (as pointed out by the Staff on page 34 of its reply brief) approval of this surcharge will necessitate re-running the COS study to account for the resulting revenue increase.

Kroger recommends that the provision causing the ELAP to automatically expire "be rescinded and the rate provision allowed to continue unless expressly terminated by a Commission order" in a subsequent general rate case. Kroger's initial brief, p. 7. In support of this recommendation, Kroger cites testimony from its witness, Mr. Townsend, to the effect that the provision "is both reasonable and cost-based." Id., p. 8 (citing 7 Tr 1048). Although agreeing that the ELAP should be allowed to continue, Detroit Edison goes on to assert that, because it "is an experimental provision, . . . it should continue with its current termination language, which would effectively continue the ELAP until a final order in Edison's next general rate case." Detroit Edison's initial brief, pp. 120-121 (citing 7 Tr 771).

The Staff responds by asserting that, despite Mr. Townsend's claims to the contrary, no evidence has been presented to show that, in fact, the ELAP is cost-based. The Staff thus recommends (like the utility) that the current expiration language should be continued, but further suggests ordering the Company "to demonstrate in the next rate case whether [the] ELAP is or is not cost based." Staff's initial brief, p. 76. For his part, the Attorney General supports the Staff's position. See, Attorney General's reply brief, p. 30.

The ALJ finds the proposal suggested by the Staff and supported by the Attorney General to be the preferable course of action. The impetus behind establishing an experimental rate in the first place is to determine its effectiveness and reasonableness before either electing to make it long-term or broader in scope, or both. Here, the basis for designating this rate as "experimental" was clearly to determine whether, once actual data regarding its effectiveness and reasonableness had been accumulated, it should be converted into a long-term service option. As such, Kroger's proposal to immediately make it a permanent part of Detroit Edison's rate structure, without first assessing hard data regarding its operation in the past, is premature. Similarly, the utility's suggestion to simply extend the program once again leaves the Commission little closer to being able to make a rational determination concerning whether the ELAP is truly effective and reasonable. The ALJ therefore recommends that the Commission adopt the joint Staff/Attorney General proposal to continue the ELAP until the issuance of the final order in Detroit Edison's next general rate case and to require the utility to demonstrate in that proceeding whether the ELAP is or is not cost based.

H. Proposed Tariff Revisions

Detroit Edison proposes to eliminate Rate D1a Residential Farm Service Provision, Rate D2a Residential Space Heating Farm Service Provision, Rate D1.4 Optional Residential Service Rate (Time of Day and Space Heating Rate), Option II of Rate D5 Water Heating Service Rate, the electric vehicle provision of Rate D1.7 Space Conditioning, Water Heating Time of Day Service, the Optional Time-Of-Day General Service Rate D3.4, and Secondary Pumping Rate E5. According to the utility's witness with regard to these proposed rates and rate options, Ms. Holmes, elimination of these provisions is being proposed primarily to "simplify the number of rates customers have to evaluate when looking at pricing options." 6 Tr 271. In addition, Ms. Holmes went on to suggest (1) expanding Rate D1.9 Electric Vehicle Service to cover commercial, as well as residential, customers, (2) establishing, within Rate E1 Municipal Street Lighting, an experimental Programmable Photocell Service provision and a De-energization charge, and (3) removing some language from the Rate D9 Outdoor Protective Lighting tariff. See, Id.

Based on testimony provided by his witness on this topic, Mr. McGarry, the Attorney General opposes the elimination of Rate D2a, Rate D1.4, and Option II of Rate D5. According to Mr. McGarry, these three tariffs should be retained because "the Company has not adequately justified the significant increases customers currently on these [rates] would experience in their monthly bills." 9 Tr 1526.

The Staff, relying on testimony provided by Mark J. Pung, an analyst in the Rates and Tariffs Section of the Commission's Regulated Energy Division, agrees with the Attorney General that "the rate impact imposed on Detroit Edison's customers" by eliminating Rate D1.4 and Option II of Rate D5 "would be too great," and thus it also recommends retaining those two tariff options. Staff's initial brief, p. 72; See also, 11 Tr 2254. The Staff further notes that, because each of those rates have been closed to new customers for years, failure to discontinue them would not confuse customers when evaluating their various rate options. See, Id. However, because it "does not believe [that] the impact on the D2a Residential Space Heating Farm Service Provision would be too great," the Staff does not support the Attorney General's proposal to have the utility retain that tariff provision. Id., p. 73.

Based on the testimony provided by Mr. Pung, the ALJ finds that Rate D1.4 and Option II of Rate D5 should be retained, but that all of Detroit Edison's other proposed tariff changes should be accepted. As such, he recommends that the Commission approve all of the tariff changes proposed by the utility, with the exception of those relating to Rate D1.4 and Option II of Rate D5.

VIII.

MISCELLANEOUS ISSUES

A pair of miscellaneous issues have arisen in this proceeding that still need to be addressed. The first concerns Local 223's requests regarding safety, training, and hiring issues. The second involves MCAAA's concerns regarding affiliate transactions.

A. Taft-Hartley Training Trust Fund

Local 223 generally supports Detroit Edison's rate increase request. Much of that support, it appears, is based on the fact that the Company projects spending, on safety- and training-related activities, \$43.3 million in 2011, \$44.7 million in 2012, and \$45.1 million in 2013. See, Exhibit UWA-11. According to Local 223, such spending is vitally necessary to address the crisis of the utility's aging workforce and the coming shortage of well-trained workers. For this and other reasons, the union requests that the Commission require Detroit Edison to establish a Taft-Hartley Training Trust (or other external funding mechanism) that would specifically set aside funds for worker training. It further requests that the Commission order the Company to file a report "outlining its plans to address the imminent crisis presented by its aging workforce, including its plans with respect to recruitment, hiring, retirement, and attrition, as well as training," plus an estimate of the anticipated costs associated with those activities. Local 223's initial brief, p. 2.

Local 223 offered two witnesses in support of its requests. The first was Richard Mata, National Director of Training for the Utility Workers of America, who provided a nation-wide overview of the problems faced by utilities with regard to workforce issues.

Mr. Mata sponsored, among other documents, Exhibit UWA-5, which is the 2006 DOE report to Congress required by the Federal Energy Policy Act of 2005. According to that report:

> The aging of the American workforce has emerged as a critical issue facing American productivity in the 21st century. As the so-called "Baby Boomer Generation" reaches retirement eligibility, the impact will be felt across both the public and private sectors. These 78 million individuals born between 1946 and 1964 have accumulated a wealth of experience and knowledge, and represent 44% of America's workforce. For electric utilities, whose service quality and reliability depends on maintaining an adequate, knowledgeable workforce, managing the upcoming retirement transition is a particular challenge.
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> [G]iven the importance of the electricity sector to the economy and security, public-private partnerships may be warranted to promote the energy industry as a viable employment option, to develop strategies for encouraging retirement-eligible workers to remain employed in the industry, and to ensure adequate training and education opportunities to support the reliability and safety of the electricity grid.

Exhibit UWA-5, p. xi. With respect to electrical line workers, for example, the DOE's report predicts an expected retirement of as much as 50% of the workforce within the next 5 to 10 years, and forecasts a critical shortage in the availability of qualified candidates to fill these positions by as many as 10,000 workers (or nearly 20% of the current work force). Id., pp. xi, 5, and 10.

The second witness offered by Local 223 was James C. Harrison, its President. Mr. Harrison offered testimony indicating that Detroit Edison is not exempt from the predictions contained in the DOE's report. According to Mr. Harrison, demographic information contained in Local 223's database reflects that:

> Of the 2,724 electric workers at [Detroit Edison], 2,383 workers are age 40 or older, representing 67% of the workforce; 1,360 are age 55 and older,

> representing 50% of the workforce; and 342 are age 60 or older, representing 13% of the workforce.

10 Tr 1927. Moreover, he reported that, based on the age demographics shown on Exhibit UWA-15 and the weighted average retirement age of 60 years old reflected on Exhibit UWA-16, "it is reasonable to conclude that . . . two-thirds of the [utility's] workforce can be expected to retire in the next 10 years." Id.

In light of these factors, and based on its fear that the identified funds may be subject to the general discretion of the utility instead of dedicated to actual training activities, Local 223 requests that the Commission (1) order Detroit Edison to place those funds into some sort of trust fund, and (2) require the utility to file a report with the Commission specifying its future training costs and hiring plan.

The Staff agrees with Local 223 recommendation that these training funds "should specifically be set aside by the utility, and monitored, exclusively for the purposes of training." Staff's reply brief, p. 38. The Staff further agrees with the utility's concern that the Company may not specifically dedicate the allocated amount for training. As such, the Staff agrees with Local 223 that Detroit Edison should continue filing training reports like that ordered in the utility's most recent rate case.

Although "recognizing the need for training" and "committed to providing appropriate funding" for the same, Detroit Edison asserts that a trust is not necessary or appropriate. Detroit Edison's reply brief, p. 107. According to the utility, it is undisputed that it has budgeted for, and is seeking recovery through the rates approved in this case of, an appropriate amount of money to fund its proposed training program. Specifically, Detroit Edison notes, even Local 223 "does not disagree with [the utility's] requested level of funding." Id. Moreover, the Company continues, although the union indicates that it has concerns regarding Detroit Edison's exercise of discretion with respect to training funds, it "has not cited any instance where [the utility] has allegedly misspent any funds, or any other tangible reason to now establish a trust." Id. Thus, the Company claims, "there is no factual basis to take any action on this matter." Id.

Detroit Edison goes on to contend that, despite Local 223's assertions to the effect that the Commission has authority to order it to participate in an external trust fund, the union "does not cite any specific grant of such authority to the Commission." Id. (citations omitted). In addition, the utility views Local 223's position as an attempt to "engage in, or complain about, matters of collective bargaining, which is improper before the Commission." Id., p. 108. Finally, the Company claims that, because it previously submitted a detailed report like that also requested in this case (pursuant to Commission directive in Case No. U-15768), filing another report of that nature is "unnecessary and inappropriate." Id., p. 109.

The ALJ notes that, in both its November 2, 2009 order in Case No. U-15645 and the January 11 order, the Commission addressed the same issues as here with regard to Consumers and Detroit Edison, respectively. Both times, the Commission apparently concluded that the looming shortage of trained utility workers is a critical problem that must be addressed. However, it also seems to have concluded that the legal question of whether a trust fund like that, sought by Local 223 can be established outside of a collective bargaining agreement, had not been adequately addressed by the parties. Thus, the Commission--again in both instances--directed the respective utility to file a detailed report regarding its proposed workforce training plan. See, November 2, 2009 order in Case No. U-15645, pp. 59-61; January 11 order, pp. 69-71.

More recently, and again expressing significant concern regarding the potentially acute shortage of trained workers that Michigan's utility companies may face in the next several years, the Commission issued a pair of rate case orders (one with regard to Consumers' gas division, and the other involving that same utility's electric division), instructing the Staff to promptly convene a technical conference "to produce a consensus report for the Commission on future training and hiring needs for electric and gas utility workers including how these needs will be met." May 17, 2010 order in Case No. U-15986, p. 59; November 4, 2010 order in Case No. U-16191, p. 67. To the ALJ's knowledge, the final conference report analyzing the technical conference has not been issued. The ALJ thus finds that (as ultimately asserted by the Staff in this proceeding) "it would be inappropriate to take further actions until the Commission has the benefit of the conference's report. It is therefore recommended that the Commission withhold ruling on whether to require Detroit Edison to either establish an external trust fund or issue a report on this issue until after receipt and review of the technical conference report concerning employee training and closely aligned issues.

B. Affiliate Transactions

In the course of this proceeding, MCAAA expressed significant concern about affiliated transactions, as well as the need for what it refers to as "ring-fencing"[52] as a means of remedying its concern. MCAAA's initial brief, p. 22. In this regard, it relied heavily on the testimony of William A. Peloquin, who began by noting that:

[52] "Ring-fencing," in the context of the present case, refers to the concept of implementing various legal measures or operating restrictions to protect the economic viability of utility companies (as well as their affiliates) within a holding company structure. Such efforts are frequently intended to insulate a regulated utility, like Detroit Edison, from the potentially riskier activities of an unregulated affiliate.

> [Detroit Edison] is a subsidiary of DTE, . . . which also owns [Mich Con] and a number of unregulated subsidiaries and affiliates. In turn, [Detroit Edison] and Mich Con also own subsidiaries and affiliates. This holding company structure inherently provides the framework and incentive for potential inter-corporate transactions aimed at enhancing holding company profits at the expense of the regulated utility subsidiaries. Such transactions can in turn drive up the costs and rates of the regulated utilities, as holding company profits can be derived under the guise of utility costs, in some instances for services or products that are provided to the utility that are unnecessary or that are provided at an inflated cost or mark-up given that the transactions are not subject to the discipline of arms-length competitive processes.

11 Tr 2078. In addition to quoting various analyses and discussions regarding the concept of "ring fencing," as well as describing its potential use in avoiding problems arising from affiliate transactions, MCAAA cited Detroit Edison's Reduced Emissions Fuel proposal in Case No. U-16434 (involving Detroit Edison's 2011 PSCR plan) as an example of an area where he felt it should be employed.

Detroit Edison responds by noting that "MCAAA's discussion, although lengthy, presents no meritorious point." Detroit Edison's reply brief, p. 110. According to the utility, much of that discussion "is simply disconnected from reality" because it ignores the fact that Detroit Edison is subject to a Code of Conduct that the Commission adopted 10 years ago in Case No. U-12134. Id. As noted by the Company:

> [T]hat case continues, and has a voluminous file that recently includes the May 5, 2011 annual report that [Detroit Edison] filed in accordance with the Code of Conduct, and the Staff's June 1, 2011 memorandum confirming the that there were no Code of Conduct complaints against [the utility] in 2010.

Id. Therefore, Detroit Edison continues, because "there is no credible concern about affiliate transactions" that would serve as the basis for adopting "ring fencing" or any other potential remedy to what the utility asserts is "a non-existent problem," MCAAA's position should be rejected in its entirety. Id., p. 111.

The ALJ agrees with Detroit Edison. The Commission has long been concerned with affiliate transactions engaged in by regulated utilities and, as a result, has taken numerous steps to protect ratepayers from any harmful effects arising from them. For example, in Cases Nos. U-10149 and U-10150, it adopted conditions regarding affiliate transactions designed to ensure that it could effectively safeguard the public interest.[53] Then, in Case No. U-13502, Detroit Edison agreed to adopt the affiliate transaction conditions as established in the preceding case.[54] Thereafter, in Case No. U-11145, the Commission reiterated its position that transactions between Mich Con and its affiliate (MCN Investment Corp.) for the acquisition of system supply gas were subject to scrutiny for reasonableness and prudence.[55] More recently, in Case No. U-15451-R, the Commission expressly acknowledged a concern for affiliate transactions as follows:

> [T]he Commission acknowledges the concern regarding affiliate purchases and the lack of evidence justifying the choice of an affiliate over a competitor. Thus, the Commission directs Mich Con to provide the Staff with information regarding the company's selection of an affiliate for each purchase of gas supply.

October 14, 2010 order in Case No. U-15451-R, p. 11.

Thus, it is obvious that the Commission is well aware of this area of concern, and has taken action--in several ways--to address the issue. The ALJ therefore finds that, because MCAAA has failed to show that these steps will prove in any way inadequate in protecting ratepayers from the dangers posed by unsupervised affiliate transactions, the ALJ recommends that the Commission reject MCAAA's arguments regarding this issue as it relates to the present case.

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[53] See, October 28, 1993 order, pp. 125-129.

[54] See, January 21, 2003 order.

[55] See, August 13, 1997 order, p. 14.

IX.

CONCLUSION

Based on the foregoing discussion, the ALJ recommends that the Commission issue an order in this proceeding adopting the findings and conclusions set forth in this PFD. These include findings to the effect that, as reflected on Attachment A: (1) Detroit Edison's total company rate base for the projected test year ending March 31, 2012 is $10,067,825,000 [$9,997,602,000 on a jurisdictional basis]; (2) the utility's overall rate of return should be set at 6.411%, including a cost of common equity in the amount of 10.15%; (3) the Company's adjusted NOI for the test year would be $549,759,000 on a total company basis [$546,362,000 on a jurisdictional basis]; and (4) the base rates, approved overall rate of return, and projected NOI established in this case give rise to a total company revenue deficiency of $156,435,000 [$154,627,000 on a jurisdictional basis]. As a result, the ALJ further recommends that the Commission authorize Detroit Edison to increase its rates for the generation and distribution of electricity in the annual amount of $154,627,000 on a jurisdictional basis.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Mark Cummins

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Date: 2011.08.12 14:44:03 -04'00'

Mark E. Cummins
Administrative Law Judge

August 12, 2011
Lansing, Michigan

Description	T/Y Ending 3/31/2012 Total Company	T/Y Ending 3/31/2012 Jurisdictional
Rate Base		
Total Utility Plant	15,867,361	15,756,873
Accumulated Depreciation and Depletion	(6,464,295)	(6,416,617)
Net Capital Lease Property	33,129	32,570
Net Nuclear Fuel Property	149,949	147,372
Capital Lease Obligations	(33,129)	(32,570)
Allowance for Working Capital	514,810	509,973
Rate Base	**10,067,825**	**9,997,601**
Adjusted Net Operating Income		
Revenues	4,338,702	4,294,609
Fuel and Purchased Power	(1,420,409)	(1,396,921)
Operations and Maintenance Expense	(1,386,003)	(1,374,992)
Depreciation and Amortization	(558,410)	(555,169)
Property and Other Taxes	(261,084)	(259,210)
State Income Taxes	(33,276)	(33,054)
Federal Income Taxes	(137,345)	(136,485)
AFUDC and Other	10,752	10,752
Amort. Of Loss on Reaquired Securities	(3,168)	(3,168)
Adjusted Net Operating Income	**549,759**	**546,362**
Revenue Deficiency / (Sufficiency)		
Rate Base	10,067,825	9,997,602
Adjusted Net Operating Income	549,758	546,362
Overall Rate of Return	5.4605%	5.4649%
Rate of Return	6.411%	6.411%
Income Requirements	645,408	640,906
Income Deficiency / (Sufficiency)	95,650	94,544
Revenue Conversion Factor	1.6355	1.6355
Revenue Deficiency / (Sufficiency)	**156,435**	**154,627**